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**IN THE SUPREME COURT
IN EQUITY.**

DAVID VAUGHAN ET AL, PLAINTIFFS,

AND

JAMES SMITH ET AL, DEFENDANTS.

PLEADINGS, DECREE AND EVIDENCE,

TAKEN BEFORE

C. N. SKINNER,

THE BARRISTER APPOINTED FOR THAT PURPOSE.

MESSRS. BARKER AND FORBES,

COUNSEL FOR THE PLAINTIFFS.

THE ATTORNEY GENERAL AND MR. MORRISON,

COUNSEL FOR THE DEFENDANTS.

**SAINT JOHN, N. B.
PRINTED BY BARNES AND COMPANY,
PRINCE WILLIAM STREET.
1871.**

IN THE SUPREME COURT
IN ROYALTY

PAID ALGHAZ & CO. BOMBAY

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PLEADINGS, DEEDS AND EVIDENCE

1872

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THE JOURNAL OF THE COURT

MR. J. H. H. H. H. H.

FOR THE COURT

THE ATTORNEY GENERAL AND MR. H. H. H.

FOR THE COURT

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THE JOURNAL OF THE COURT
1872

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IN THE SUPREME COURT IN EQUITY.

BETWEEN

David Vaughan and Henry Vaughan, James Vaughan, James Robinson, and Mary Ann Vaughan, Executors and Executrix of the last Will and Testament of Thomas Vaughan, deceased, *Plaintiffs*.

AND

James Smith and Margaret Smith, John McMoran and Maria McMoran, *Defendants*.

W. H. SINNOTT, Counsel for Plaintiff.

1st.—The plaintiffs complain that by virtue of an indenture of mortgage, duly registered in the office of the Registrar of Deeds in and for the City and County of Saint John, and bearing date the seventh day of June, in the year of our Lord one thousand eight hundred and sixty-four, and made between the defendants, James Smith and Margaret Smith, his wife, of the one part, and the above named plaintiffs, David Vaughan and the said Thomas Vaughan, since deceased, of the other part, that the said above named plaintiff David Vaughan and the said Thomas Vaughan, deceased, were mortgagees of certain property therein comprised, situate and described as follows:—

“All that certain piece or parcel of land situate, lying and being in Queen's Ward, in the City of Saint John aforesaid, being a part of a lot of land known on the map or plan of that part of the said City which lies to the Eastward of the harbour of Saint John by the number (18) eighteen: the said piece or parcel of land hereby bargained and sold, or intended so to be, having a front of fifty feet, more or less, on the Western side line of Prince William Street and extending back therefrom Westwardly, preserving the same breadth, ninety-five feet, more or less, to the Eastern side line of Saint John or Water Street, including all that part of said lot number eighteen that lies between Prince William Street and Saint John or Water Street aforesaid, for securing the sum of five thousand pounds and interest, which said mortgage and a bond given therewith are now in the custody of the said plaintiffs.”

2nd.—That on or about the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and sixty-seven, and after the making of the said mortgage, the said Thomas Vaughan departed this life at the said City of Saint John, having first duly made and published his last will and testament and a codicil thereunto, which said codicil was to be added to and taken as a part of said Will and Testament.

3rd.—That by the said last Will and Testament the above named plaintiffs, Henry Vaughan, James Vaughan and Mary Ann Vaughan were appointed executors, and executrix thereof. That by the said codicil the above named James Robinson was appointed another Executor to act in conjunction with the said Henry Vaughan, James Vaughan and Mary Ann Vaughan.

4th.—That the above named plaintiffs, James Vaughan, James Robinson, and Mary Ann Vaughan, after the death of the said Thomas Vaughan, proved the said last Will and Testament, and the codicil to the same, before the Probate Court of the said City and County of Saint John, and took upon themselves the burden of the execution thereof, and letters testamentary were, on the eighth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, by Charles N. Skinner, Esquire, Judge of the said Probate Court, granted to the said James Vaughan, James Robinson and Mary Ann Vaughan; and which said letters testamentary are now in the custody of the said James Vaughan, James Robinson and Mary Ann Vaughan.

5th.—And in common with other property of him, the said Thomas Vaughan, his interest in the said mortgage and the money secured thereby, was devised to the said executors and executrix upon trust that they should, with all convenient speed after the decease of him, the said Thomas Vaughan, call in and collect and compel payment of the same; and for that purpose the said executors were, by the said Will, authorized to adopt, commence, prosecute, complete and carry on any whatever proceedings at law or in equity as should or might to them appear necessary or advisable for such purpose, and the receipt or receipts of them the said executors, for all money paid them under and by virtue of the said Will, were in and by the said Will made in all cases a sufficient and effectual discharge for such sum or sums of money as they should by such receipt or receipts acknowledge to have received. And in and by the said Will they, the said executors and executrix of him the said Thomas Vaughan, were given full power over the bonds, mortgages, specialties, contracts and other documents under seal or otherwise belonging to him the said Thomas Vaughan, with full power to sell, settle, foreclose, or in any way lawfully to deal with and dispose of the same or any part of them.

6th.—That no special demise of the said mortgage or money secured thereby, or of the interest of him, the said Thomas Vaughan, therein, other than that set forth in the fifth paragraph of this bill is made, and by the said Will or codicil of him the said Thomas Vaughan.

7th.—That under and by virtue of a covenant or clause contained in said mortgage, the said defendant James Smith was to insure the buildings and erections on the said lot of land against loss or damage by fire to an amount of not less than three thousand pounds, and cause the policy or policies thereof to be made payable, in case of loss, to the said mortgagees, their executors, administrators or assigns, and in case of neglect of the said James Smith, his executors, administrators or assigns so to do, it should be lawful for the said David Vaughan and Thomas Vaughan, their and each of their executors, administrators or assigns to insure and keep insured the same in such manner and form as to them might seem fit, and that the sum or sums of money so paid, with interest on the same from the respective time of paying the same, should be payable to the said David Vaughan and Thomas Vaughan, their executors, administrators or assigns on demand, and should be chargeable on the said premises. That the said defendant James Smith did neglect and refuse to make and continue such insurance; and the said plaintiffs have been obliged to pay and lay out a large sum of money for effecting and

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continuing said insurance, to wit, the sum of seventy dollars, which said sum of money has become a further charge on said premises.

8th.—That the time for the payment of the said sum of money secured by said mortgage, and the interest thereon, has elapsed, and that the said defendants are entitled to the equity of redemption of the said mortgaged premises.

II. That the plaintiffs, therefore, pray to be paid the said sum of five thousand pounds and interest, and the said premium money for insurance as aforesaid, with costs of this suit; and in default that the equity of redemption may be foreclosed, the mortgaged premises sold, and the produce thereof applied in payment of their said debt and costs, and for this purpose to have all proper directions given and account taken.

FORBES & SINNOTT, Plaintiffs' Solicitors.

[Amended as by Order of the Court.]

9th.—That on the nineteenth day of April, one thousand eight hundred and sixty-seven, the said James Smith and Margaret Smith, his wife, did, by deed duly recorded, assign, transfer and convey all their right, title and interest in the said lands premises, with other lands and premises, to one John McMoran, whereby the said defendant, John McMoran, is interested in the equity of redemption thereof, and which deed is not in the possession or under the control of the said plaintiffs.

10th.—That the said defendant John McMoran, and one Maria McMoran, his wife, executed a mortgage bearing date the eleventh day of October last past upon the said lot of land and premises, with other lands and premises therein described, to the said defendant James Smith, and that such mortgage is not in the possession of the said plaintiffs, nor do they know in whose possession said mortgage is.

(INDORSED.)

Supreme Court in Equity.

David Vaughan and Henry Vaughan, James Vaughan, James Robinson and Mary Ann Vaughan, Executors and Executrix of Thomas Vaughan, deceased.

AND

James Smith and Margaret Smith, John McMoran and Maria McMoran.

Bill.

FORBES & SINNOTT, Plaintiffs Solicitor.

Filed 25th August, 1868.

IN THE SUPREME COURT IN EQUITY.

BETWEEN

David Vaughan and Henry Vaughan, James Robinson, and Mary Ann Vaughan, Executors and Executrix of the last Will and Testament of Thomas Vaughan, deceased, *Plaintiffs*.

AND

John McMoran, James Smith, Maria McMoran, and Margaret Smith, *Defendants*.

Interrogatories for the examination of the above-named defendants, in answer to the plaintiffs' bill of complaint.

1st.—Has not a mortgage been made, given, and duly registered to the said David Vaughan and one Thomas Vaughan, since deceased, of the date, for the sum, and in the premises on the first section of the said bill mentioned, or some other, and what date, sum, and premises respectively?

2nd.—Did not the said Thomas Vaughan depart this life on or about the twenty-third day of July, in the year of our Lord one thousand eight hundred and sixty-seven, at the said City of Saint John, or on some other and what day, at some other and what place; and did he not first duly make and publish his last Will and testament, and a codicil thereto as stated in the second section of the plaintiffs' bill, or how otherwise?

3rd.—Did not the said Thomas Vaughan, by his said last Will and testament, appoint the above-named plaintiffs—Henry Vaughan, James Vaughan, and Mary Ann Vaughan—the executors and executrix thereof, and did he not appoint the said plaintiff, James Robinson, another executor thereof, by his said codicil to his said Will, as stated in the third section of the plaintiffs' bill, or who were appointed executors thereof?

4th.—Did not the said plaintiffs, James Vaughan, James Robinson, and Mary Ann Vaughan, prove the said last Will and testament and codicil to the same, before the Probate Court for the said City and County of Saint John; and were not letters testamentary granted to them by the Judge of the said Court, or how otherwise?

5th.—Did not the said Thomas Vaughan, in common with other property, devise his interest in said mortgage, to his said executors and executrix, upon trust for the purpose, and with the powers set forth in the fifth section of the plaintiffs' bill, or how otherwise?

6th.—Was there any special devise of the said mortgage, or money secured thereby, or of the interest of him, the said Thomas Vaughan, therein, other than that set forth in the fifth paragraph of the plaintiffs' bill, under or by the said Will or codicil of him, the said Thomas Vaughan?

7th.—Did not the said plaintiffs pay the sum of seventy dollars, or what other sum, as premiums for insurance of the buildings and erections on the said premises, or who did pay the said premiums, and were they not authorized thereto, as set forth in the seventh section of the plaintiffs' bill; and is not such sum a further charge upon said premises?

8th.—Has not the time for the payment of the said sum of money elapsed, and are not the said defendants entitled to the equity of redemption?

W. H. SINNOTT, Counsel for Plaintiffs.

9th.—Did the said defendants—James Smith and Margaret Smith—assign, transfer, and convey their interest in the said premises to the said defendant, John McMoran, by a certain indenture of deed, dated on or about the eleventh day of April, A. D. 1867; and is not the said John McMoran and Maria McMoran, his wife, interested in the equity of redemption thereof, and in whose possession or custody is the said deed or conveyance?

10th.—Did not the said John McMoran and Maria McMoran, his wife, at the time, and on the day mentioned in the tenth section of the plaintiffs' bill, execute a mortgage to the said defendant, James Smith, of the said premises, with other lands and premises therein included, or how

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otherwise; and is said mortgage in the said plaintiffs' hands, or in whose possession is it?

W. H. SINNOTT, Counsel for Plaintiffs.

(INDORSED.)

Supreme Court in Equity.

David Vaughan and Henry Vaughan, James Vaughan, James Robinson, and Mary Ann Vaughan, Executors and Executrix of the last Will and Testament of Thomas Vaughan, deceased.

Interrogatives.

AND

James Smith and Margaret Smith, and John McMoran and Maria McMoran.

FORBES & SINNOTT, Plaintiffs' Solicitor.

Filed 25th August, 1868.

SUPREME COURT IN EQUITY.

BETWEEN

David Vaughan and Henry Vaughan, James Vaughan, James Robinson, and Mary Ann Vaughan, Executors and Executrix of the last Will and Testament of Thomas Vaughan, deceased, *Plaintiffs*.

AND

James Smith and Margaret Smith, *Defendants*.

of counsel with the defendant,

JAMES SMITH.

The answer of the above-named defendant, James Smith, to the plaintiffs' bill of complaint.

1st.—I admit that the mortgage was made, given, and duly registered to the said David Vaughan and one Thomas Vaughan, since deceased, of the date, and for the sum, in the first section of the plaintiffs' bill mentioned; but I state that at the same time, and as a part of the same transaction, I gave the said David Vaughan and Thomas Vaughan, who were then carrying on business in general co-partnership, in Saint John, under the name, style, and firm of D. & T. Vaughan, another mortgage on certain property of mine, in the City of Saint John, for eight thousand dollars and interest; all of which I afterwards paid in full, and also at the request of the said David and Thomas Vaughan, a mortgage to the said Henry Vaughan, who was the brother and agent of the said David and Thomas Vaughan, for ten thousand pounds, with interest, on a new ship of about fifteen hundred tons register, called the *Palm Tree*, which I had just before built, and into which I had put the whole of the said money received from the said David and Thomas Vaughan; that the said three mortgages were given to secure the sum of sixty-six thousand three hundred and sixty-one dollars, which they alleged I owed them for advances made to me in building the said ship, and interest thereon; and also the further sum of one thousand dollars of usurious interest, that they insisted that I should pay over and about the interest for the forbearance of the said sum of money, until the fourth day of December then next, and which I was obliged to agree to, to get the said ship to sea. I then loaded the ship in the port of Saint John, and dispatched her, with a cargo, to Liverpool; and at the request of the said David

and Thomas Vaughan, she was consigned to Messrs. Miller & Mossman, the agents of the said David and Thomas Vaughan, who I authorized to receive the freight as the agents of the said David and Thomas Vaughan, and at their request. The ship arrived safely at Liverpool, and carried a large freight, which was collected and received by the said Miller & Mossman for the said David and Thomas Vaughan. I was then desirous of selling the said ship, and paying off all the mortgages, which I could have done for enough to pay them all off; but the said David and Thomas Vaughan, by their agents, took possession and charge of the ship, and kept her at Liverpool, against my will, for eight months, until the mortgage came due. I then went to Liverpool, and, with difficulty, got them to agree not to interfere with the ship, or her freight, until she could make one voyage from Liverpool to Australia, and from thence to Callao and Chinchas, and thence to Europe. I then made an agreement with James Baines & Company, of Liverpool, for them to fit out the vessel for a voyage to Melbourne, in Australia, and to lay her on the berth at Liverpool, and take the outward freight for payment. They accordingly fitted out the said ship, at a cost of about seven thousand pounds sterling, and laid her on accordingly; that she carried the cargo to Melbourne, and the captain put a bottomry on the ship there for a considerable sum, payable in three days after her arrival at Callao; that one Captain Betts, the agent of the said David and Thomas Vaughan, then procured an advance on the freight to be earned by the said ship for carrying a cargo of guano from Chinchas to Europe, for which she was under charter at three pounds ten shillings per ton, and paid off the said bottomry bond; and then for the said David and Thomas Vaughan's own purposes, took another bottomry bond on the said ship for a large premium, besides which he applied the funds so raised out of the freight of the said ship, to pay a part of the disbursements of two ships of the said Vaughans, which they then had there, besides which they took a guano boat, masts, sails, and other things of large value belonging to the said ship, and converted and disposed of the same to the use of the other ships, and never gave me any account therefor. The said *Palm Tree* then proceeded to Queenstown for orders; and when there, the said David and Thomas Vaughan, by their agents, paid the charterers fifty pounds to induce them to order the ship to London, which they did; and afterwards she arrived at London, when the said David and Thomas Vaughan, in breach of the agreement that they had made with me, obtained an injunction out of some Court there to prevent the payment of the freight; and when that was dissolved, they caused the said ship and freight to be arrested on the said bottomry bond given to Captain Betts, when a number of parties who had supplied the outfits for the outward voyage, on the order of the said James Baines & Company, and for which he had been paid by the said outward freight, but which they alleged he had not paid to them, and they had become insolvent, arrested the said ship for these claims; when the said Henry Vaughan, as the agent of the said David and Thomas Vaughan, sold the said ship at public auction in London, under and by virtue of the said mortgage, and she was bid off by and conveyed to the agent of the said David & Thomas Vaughan, for the sum of nine thousand two hundred and fifty pounds sterling; that the said purchaser was merely trustee for them; and they afterwards sold her

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to another person for ten thousand pounds sterling; and I believe they are still interested in the said ship. I have never been able to get an account of the said transactions; and I claim that they should account to me for the use of the said ship while they kept her at Liverpool, and also for the money or other things they or their agents received from her; and that they, as purchasers, were bound, after such sale, under the said mortgage, and purchase by or for them, to pay off and indemnify me against all losses or charges on the said ship that had priority over the said mortgage, such as the lien of the material, men, and the said bottomry, and that an account should be taken of those matters; and if the said David and Thomas Vaughan has received or ought to pay enough to satisfy the whole amount justly due them, that they should be decreed to discharge the said mortgage.

2d.—I admit that the said Thomas Vaughan did depart this life on or about the twenty-second day of July, in the year of our Lord one thousand eight hundred and sixty-seven, at the City of Saint John.

3d.—I admit that the said Thomas Vaughan did, by his last Will and testament, appoint the above-named plaintiffs, Henry Vaughan, James Vaughan, and Mary Ann Vaughan, as the executors and executrix thereof, and he did appoint the said James Robinson another executor thereof, by a codicil to the said Will.

4th.—I admit that the said James Vaughan, James Robinson, and Mary Ann Vaughan, did prove the said last Will and testament and codicil before the Probate Court for the City and County of Saint John, and letters testamentary were granted to them by the Judge of the said Court.

5th.—I am utterly ignorant of all the matters enquired of by the fifth, sixth, and seventh interrogatories, and can form no belief on the subject.

6th.—The time for the payment of the mortgage money is elapsed, and the said plaintiffs have taken possession of the said mortgaged premises, and have occupied the same, and recovered rents, and they, together with the money that they received from the sale of the said ship *Palm Tree*, was more than sufficient to pay off the said mortgage, and they ought to discharge the same. I am not entitled to the equity of redemption in the said mortgaged premises.

The said James Smith was duly sworn to the }
truth of this answer at
this day of A. D. 1869, }
Before me,

A Commissioner, &c. Supreme Court in Equity.

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THE SUPREME COURT IN EQUITY.

Wednesday, 5th October, 1870.

Before His Honor Mr. Justice Allen.

BETWEEN

David Vaughan and Henry Vaughan, James Vaughan, James Robinson, and Mary Ann Vaughan, Executors and Executrix of his last Will and Testament of Thomas Vaughan, deceased, *Plaintiffs*.

AND

James Smith and Margaret Smith, *Defendants*.

And by amendment

BETWEEN

David Vaughan and Henry Vaughan, James Vaughan, James Robinson, and Mary Ann Vaughan, Executors and Executrix of the last Will and Testament of Thomas Vaughan, deceased, *Plaintiffs*.

AND

James Smith and Margaret Smith, and John McMoran and Maria McMoran, *Defendants*.

Ordered by, and with the consent of counsel for both parties, that Charles N. Skinner, Esquire, a Barrister, be appointed a Commissioner to take the examination of all such witnesses as may be produced before him in the above cause, as well on the part of the *Plaintiffs* as on the part of the *Defendants*.

By the Court.

W. CAEMAN, *Clerk in Equity*.

IN THE SUPREME COURT IN EQUITY.

David Vaughan *et al*, *Plaintiffs*.

AND

James Smith *et al*, *Defendants*.

Charles N. Skinner, the Barrister within named, was by me this day duly sworn to the faithful discharge of the duties referred to him by the within decree.

Fredericton, October 25th, 1870.

A.R. WETMORE, *J. S. C.*

IN THE SUPREME COURT IN EQUITY.

BETWEEN

David Vaughan and Henry Vaughan, James Vaughan, James Robinson, and Mary Ann Vaughan, Executors and Executrix of the last Will and Testament of Thomas Vaughan, deceased, *Plaintiffs*;

AND

James Smith and Margaret Smith, *Defendants*.

And by amendment—

BETWEEN

David Vaughan and Henry Vaughan, James Vaughan, James Robinson, and Mary Ann Vaughan, Executors and Executrix of the last Will and Testament of Thomas Vaughan, deceased, *Plaintiffs*;

AND

James Smith and Margaret Smith, John McMoran and Maria McMoran, *Defendants*.

December 9th, 1870. Mr. Forbes, Solicitor for the plaintiffs, applied for and obtained a summons for hearing and examining witnesses, returnable the 12th instant, at 2 o'clock, P. M.

December 12th, 1870, 2 o'clock, P. M. I was to day attended by Mr. Forbes, on the part of the plaintiffs, and by Mr. Cole, on the part of the defendants. Adjourned without doing any thing.

C. N. SKINNER, *Barrister*.

January 3, 1870. Mr. Forbes, Solicitor for the plaintiffs, this day obtained a summons for the examination of witnesses, returnable on the fifth instant, at two and one half of the clock in the afternoon.

January 5th, 1870, half-past 2 o'clock, P. M. I was to day attended by Mr. Sinnott and Mr. Barker, on the part of the plaintiffs, and Mr. Palmer on the part of the defendants, James Smith and Margaret Smith.

Ward Chipman Drury called and sworn, says—

I am Registrar of deeds for the City and County of Saint John. I know James Smith, who formerly lived here, a ship builder. [A document is produced to the witness.] I am the subscribing witness to this document: it is signed by James Smith, and was signed by him in my presence. [Document put in, and marked A. Another paper put in witness' hand.] I am the subscribing witness to this paper: it was signed by James Smith and Margaret Smith in my presence, and acknowledged before me. [Paper put in, and marked B. Probate of the will of Thomas Vaughan, dated April 8th, 1868, put in by consent, and marked C. Probate of will of David Vaughan, put in, dated 1st October, 1870, put in by consent, and marked D.]

Cross examined by Mr. Palmer. I recollect of this bond and mortgage being executed by the parties. I went to take the acknowledgment at the house. I knew nothing about the drawing of the papers or the agreement between the parties.

Adjourned until the 7th instant, at half-past two o'clock.

C. N. SKINNER, *Barrister*.

January 7th, half-past two. Met pursuant to adjournment. Present as before. Adjourned until the 14th instant, at half-past two o'clock.

C. N. SKINNER, *Barrister.*

April 1, 1871. Met pursuant to summons Adjourned until the 8th instant, at half-past two o'clock, P. M.

C. N. SKINNER, *Barrister.*

April 8th, 1871. Met pursuant to adjournment. Present: Messrs. Barker and Forbes, on the part of the plaintiffs; Mr. Morrison, on the part of the defendants.

James Robinson called and sworn, and says—

I know this property on which this mortgage was given, in Prince William street. I have been in the employ of Mr. Vaughan since before this mortgage was given. I, on behalf of Vaughans, insured the buildings mentioned in the mortgage, or upon the lands mentioned in the mortgage. This is the policy of insurance and renewal receipts. The policy and renewal receipts put in the insurance was sixty dollars a year for premium—three quarters per cent. on eight thousand dollars. I paid the premium each year for Messrs. Vaughan. There was no other insurance upon the buildings. I paid sixty dollars each year. I paid the first sixty dollars on the twenty-seventh day of February, A. D. 1869, and sixty dollars each twenty-seventh day of February since.

June 5th, 1871, Two o'clock, P. M. Met pursuant to summons taken out by Mr. Morrison, on part of the defendants. Present—Mr. Forbes and Mr. Barker on the part of the plaintiffs, and the Attorney General and Mr. Morrison on the part of the defendant, James Smith.

Mr. Barker, on part of plaintiffs, protests against the Barrister proceeding any further, as an order of Judge Weldon directed the proceedings to be closed.

Mr. Morrison says that the order of Judge Weldon was enlarged by his subsequent order; and that on the ninth day of May, Judge Weldon ordered that the said order be enlarged for twenty days, from the said ninth day of May, then instant. That on the twenty-third day of May last, he applied to the Barrister for an order or summons, and the Barrister informed him that Mr. Forbes was in Fredericton, and he had better wait until his return; and that on the twenty-ninth day of May last, he took out a summons to proceed in this cause before said Barrister; and that the order was, although dated on the 30th, taken out on Monday, the 29th May last.

Mr. Barker here states that they proceed under protest.

The plaintiff closes here.

EVIDENCE FOR THE DEFENCE.

James Smith being called, and sworn, says—

I knew the late David and Thomas Vaughan. I had some money transactions with them: they commenced in 1864. In the winter of 1863 and 1864, about the month of February, I was about to build a ship. I applied to Mr. Thomas Vaughan for a loan of money to build the ship. After some considerable talk backwards and forwards, he agreed to advance me some money. I stated to him the purpose for which I wanted the money: that is to say, to build a Ship. The firm then lent

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u her, and it cost me between four and five hundred pounds to do
build a ship. After the ship was launched, I gave them a further security upon
to build the ship herself. [Certified copy of mortgage put in from James Smith
rds, he agreed to Henry Vaughan, of ship "*Palm Tree*," dated 20th June, 1865, for
for which ten thousand pounds currency.] This mortgage is upon the ship in
firm then lent question. [Mr. Barker objects to this mortgage being put in evidence,

the money from time to time. The accounts will shew the amounts. I gave them security for the money. Q.—Upon what did you give security for the money? [Objected to by Mr. Barker, who asks the witness this question. Q.—Was it a written security. Ans.—Yes. Then Mr. Barker objects to the question being answered, until the production of the writings. The Attorney General calls for the written securities or mortgages, under the notice to produce now handed in, by which it appears that the notice to produce was served this day.] The mortgage already in evidence, is put in the hands of the witness, and he then says—Yes; this is the mortgage I gave, and this is the bond I gave (meaning the bond already in evidence). This bond and mortgage were given as collateral security for the moneys borrowed. I gave no other security on real estate, except a mortgage upon the Queen square property. The Queen square mortgage was given first. They were both given as security for these loans. When the ship was launched I gave a further security. Before the ship was launched I gave security. Q.—For what purpose did you give all these securities? [Objected to on the ground that it would appear by the documents what these securities were given for.] Ans.—For money to build this ship. After the money was expended on the ship that I had gotten on these properties, I had a conversation with Mr. Thomas Vaughan; we were going up Princess street, to his own house. I was in company with him; I cannot say exactly what time: it was before the ship was launched, and while she was building. He said if he advanced any more money, he must have eight and one-half per cent. for it. I told him eight and one-half per cent. was out of the way for it; but the ship was partly finished, and I did not want two accounts, or to apply to other parties for money, the way I was situated. I told him I would get the money from him, and I expected he would do what was right. I then went on getting money, as it was required, and went on building the ship. I builded the ship at the foot of Princess street, between that and Orange street. Mr. David Vaughan was there repeatedly while the ship was building. Mr. Henry Vaughan was there some times, but not so frequently as Mr. David Vaughan; but Mr. Thomas Vaughan was in England. Mr. James Robinson was there frequently too; he was their business man. They generally expressed themselves satisfied with the way the ship progressed. The firm of D. & T. Vaughan was composed, as I supposed, by David Vaughan, Thomas Vaughan, Henry Vaughan, and Simeon Vaughan. I do not know, of my own knowledge; this was the way I understood it. The ship was about finished, at which time David Vaughan saw me, and requested me to put in bilge logs, and bolt them through and through with copper, to strengthen her. He said it would strengthen her; and if they were not put in, whoever bought her would put them in; and he said, if we should buy her we would put them in; and it would be greatly cheaper to put them in now. I did put them in her, and it cost me between four and five hundred pounds to do so. After the ship was launched, I gave them a further security upon the ship herself. [Certified copy of mortgage put in from James Smith to Henry Vaughan, of ship "*Palm Tree*," dated 20th June, 1865, for ten thousand pounds currency.] This mortgage is upon the ship in question. [Mr. Barker objects to this mortgage being put in evidence,

as it is drawn to Henry Vaughan, &c.] At the time I gave this mortgage the ship was nearly ready for sea. I had a conversation with Thomas Vaughan: he wanted security for the balance of the money which I had got to build the ship. Mr. Thomas Vaughan and I went into Mr. Vaughan's office: Mr. David Vaughan was there, and I think James Robinson was there; we were talking about the amount that was due. No amount was settled upon then. I said I will give you a security for ten thousand pounds; and when we come to settle, you will do what is right with me, whatever the sum may be. David Vaughan was sitting on a chair; Thomas looked over towards him, and said that will make the things all right—that will do; and the mortgage was then given. It was agreed upon then, and Mr. Thomas Vaughan said the mortgage had better be given to Henry Vaughan, as he would be at home, and it would be easier dealing with him than with the whole firm. I now refer to the mortgage upon the ship. The word home had reference to England, as I took it, to which place the ship was bound. I told Mr. Thomas Vaughan, in a conversation I had with him the same day, that I was going to consign the ship to Messrs. Lamport & Holt, of Liverpool: he said—No; you had better consign her to Miller, Mossman & Co.; and you and old John Miller are such friends, he will do the best he can for you, as he is a ship broker. True, said I, we are friendly, but I never liked their way of doing business. He then said, they are our Agents, and they will do the best they can for you; and it will only cost you one and a half per cent. for whatever business they do for you. He then said, just put the ship in their hands, and don't make a mess of it; and lest anything disagreeable would come of it, I did put the ship in their hands. What I mean by lest anything disagreeable would come of it, I was afraid if I did not put her in their hands, Messrs. Vaughans would be displeased at it. The ship was loaded. I gave Messrs. D. & T. Vaughan. [The Attorney General here, under the notice to produce, calls for an order drawn by witness upon Farnsworth & Jardine, in favor of D. & T. Vaughan.] I gave the order to Thomas Vaughan. [Order not produced by plaintiff.] Mr. Barker states that in the ordinary course of business, the order would not be in plaintiff's hands, but in those of Messrs. Farnsworth & Jardine. The Attorney General claims that the order was given to the plaintiffs; and it will be for them to shew what they did with it. Mr. Barker here claims to ask the witness if he does not know that the order is in the hands of Messrs. Farnsworth & Jardine; and Mr. Barker also objects that the notice to produce has not been served in time—it having only been served this day. The Attorney General objects that the Barrister has no power to allow Mr. Barker to put such a question now; and that the question is irregular, and should not be put at this stage of the proceedings. The question is allowed here, subject, of course, to the objection. The question and answer so objected to, are as follows:

Q.—Do you not know of this order being in Farnsworth & Jardine's hands and possession long after you gave it to Mr. Vaughan here. *Ans.*—I never saw the order in Farnsworth & Jardine's hands after I gave it. Mr. Barker here states that he does not consider this an answer to his question, and here repeats the question and says—Do you not know it was in their hands after you gave it? *Ans.*—I never saw it after I

ve this mort- gave it. Mr. Barker here repeats the question, and the witness says :
 of the money I do not know of it; I had no way of knowing it.

n and I went The Attorney General resumed the examination of Mr. Smith.

and I think *Ques.* Do you know what the order was? [Objected to by Mr. Barker: first no sufficient notice to produce given, the time being unreasonably short; second, in the ordinary course of business it would not be in our possession; third, not shown to be in the plaintiff's possession.]

le you a secu- *Ans.* The order was about as follows: Messrs. Farnsworth & Jardine, please pay to the order of Messrs. D. & T. Vaughan the freight of *Palm Tree*, as per charter party, and signed by myself. The ship was loaded in July 1865. I never received her freight—not a penny piece of it. Some of it was spent in disbursements—that was paying off balance of port charges and sailors' wages at Liverpool. I went to England after the ship went on there; I arrived there before the ship got there; the ship was put in the hands of Miller, Mossman & Co., of Liverpool. They entered the ship in the usual way; the ship was docked and discharged. *Q.* Had you any conversation with Henry Vaughan in Liverpool with reference to the ship? *Ans.* Yes, I had conversations with Mr. Henry Vaughan as to a sale of the ship and what could be done with her. I tried to sell the ship to any purchaser that came along; one was Captain Lindsay; he looked at the ship. I considered her worth £10 sterling per ton; that was my asking price. I have been building ships a long time, over forty years. I have built a large number, large and small—forty-nine; my ships are well known in the English market: their character, so far as I know, was as good as any that went out of New Brunswick, and in many cases better. For several years my ships brought from ten to fifteen shillings a ton more than other people's ships. In the way the market stood then I valued her at £9 sterling per ton; her market value then was certainly not less than that; this was as she went from here, without being coppered or classed, and with a short outfit. I did not sell her then; the prevention was that a purchaser came and I told him my price, and I told Mr. Miller my price. Mr. Miller said—[Here Mr. Barker objects to what Mr. Miller said about the sale of the vessel. The Attorney General replies that Mr. Miller was Mr. Vaughan's agent.] Mr. Smith, if you are going to sell her at that I can get you a purchaser where there will be no trouble about the money, the pay, but a man must be a perfect fool in the state of the market that would sell that ship at that price, for ships will come up, and pay you for keeping her, and when you come to sell her for that I can get you a purchaser where there will be no trouble about the money. I said I was anxious to sell, and I wanted to know who the party was. He said the party was all right, and there would be no trouble when I wanted to sell for that price. I mentioned to Mr. Miller, who I then had the conversation with, and who was one of the firm of Miller & Mossman, that Captain Lindsay said the vessel was worth nine pounds, and if I would take that his correspondents, Joseph Tarratt & Co., would buy her. When I say nine pounds, I mean nine pounds sterling per ton. *Q.* Did you tell Mr. Miller the facts as they had occurred. [Mr. Barker objects.] *Ans.* Yes. Mr. Miller repeated what he said that he could get a purchaser at what he said. I had another offer to purchase her from an Aberdeen man, and an offer from Mr. Major, and an offer from Mr.

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Tarratt. The Aberdeen man's offer was only seven pounds fifteen. The market was declining then. Mr. Major's offer was eight pounds five. He said, if I would take it he would give eight pounds ten; he said he was in treaty for a ship of Mr. Fisher's with Mr. Coaltart. He said he could get that ship at seven pounds ten, but that he would rather have mine at eight pounds ten. I told him I had other parties to consult, and I would give him an answer next day at twelve. The parties I wished to consult were Messrs. Miller & Mossman, the agent, and Mr. Henry Vaughan, if he could be seen. His terms were as usual, one quarter cash and balance secured on the ship. I saw Mr. Miller next morning, and told him about this offer, as I have here stated it. He said them parties Major had bought a ship for them some time ago, and they were not able to pay the deposit, and he did not want to sell the ship to such parties, and he would not take them for the ship. He said, if you are going to sell the ship for that, I can get you parties that will take her that there will be no trouble with. I said, you have been telling me that and keeping me back since I have been here. I want you to tell me who the parties are; I am determined to sell the ship; I want to know who the parties are; I want to come face to face to see who the parties are, and see if we cannot come to some arrangement. I asked him a third time before I could get an answer. I was determined to get an answer, to know who it was, as I was determined to sell. He told me it was Mr. Vaughans. I said, why did you not tell me that before. I said Mr. Henry Vaughan has come in, I hear him in the outside office; I will go and ask him. I came out and did ask Mr. Vaughan—Mr. Henry Vaughan here present. He said, Mr. Smith we have too many ships, we sold one the other day, the old *David*, and I would not give you seven pounds ten for her. Mr. Miller came out to the outside office, and I said, Mr. Miller, you have been keeping me all along telling me about your purchaser, and now this is the way. I then went away home to my lodgings to meet my appointment with Major, who was there before I left Mr. Vaughan, though he said he did not want to take such paper, referring to Major's offer. This conversation with Mr. Miller and Mr. Vaughan was seven or eight months after the ship had arrived in Liverpool: it was in the winter; the ship arrived there last July, 1865. The first conversation with Miller about Lindsay's offer was just after the ship arrived in Liverpool. I met Major after this conversation with Messrs. Vaughan and Miller, stated above, according to my appointment with him at my lodging. [Mr. Barker here objects to the witness telling his conversation with Major—the witness stating that Mr. Vaughan was not present.] Major said he was sorry when I told him that I had to decline his offer, both on my account and his own account. He said—I have neither purchased a ship for them, nor they for themselves, but what they were able to pay for: he said this after I had told him what Mr. Vaughan and Mr. Miller had said about his principals. He then said he had been in treaty with Messrs. Coaltarts about a ship of Mr. Fisher's, and that he would go now and take her, and pay for her with the like payments as he had offered me: his principals were Messrs. Farnham, of London. The meaning of the terms was one-quarter cash, balance on time, which meant four and six months. This was the usual way: very seldom ships were sold for cash. They had to be coppered

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and classed after that, and the ship would be so much more value. The balance, at four and six months, would be secured on the ship. He was to pay for fifteen hundred and forty tons—this was medium tonnage, which means the average between old and new: her old tonnage was sixteen hundred and eight, and her new was fourteen hundred and seventy-two. When I spoke of her value, it was when I first went there; I then spoke of her value upon the old tonnage.

Adjourned until Thursday, 6th June, at same place, at two o'clock, P. M.

TUESDAY, 6th June, 1871, two o'clock, P. M.

Met pursuant to adjournment. Present as before.

James Smith's evidence resumed.

I had further conversations with other parties concerning selling the ship. Mr. Tarratt said to me—[Mr. Barker and Mr. Forbes object to any conversation with Tarratt. The Attorney General here does not press the evidence.] I told Mr. Miller that Tarratt would not renew his former offer that he had made through Captain Lindsay, on account of rumors going through Liverpool that Mr. Henry Vaughan would not allow her to sail on a voyage; and he (Tarratt) expected a bargain of her, as she likely would be sold; but he now would not give over seven pounds fifteen shillings a ton, and he wanted to get a commission for selling, as he had other parties connected with him, as I understood; and I also then stated to Mr. Miller that Tarratt said there was a mortgage upon the ship, and he expected that she would be sold under it. There did take place between me and Henry Vaughan and Mr. Miller conversations about sailing the ship. I was offered forty-seven shillings and sixpence per ton for coals from Birkenhead to Aden: the offer was made by Captain Pritchard's brother: the charter party was submitted to me for approval; and I communicated all these particulars to Mr. Vaughan; and in the conversation, amongst other things, told him how the payments were to be made, as per the charter party, viz., three-fourths of the outer freight cash down, if required, and the balance he wished to remain to pay the foreign disbursements; but if I wished he would pay all cash down. I told Mr. Vaughan what was the contents of the charter party. Mr. Vaughan said they had more ships now than they could manage; and there was more risk in runningships than people thought: and if she did not sell, she might lie in the dock; that they could get their interest in the dock as well as out of it. I said, what is to be done? the ship cannot be sold at a price to pay; let her go on a voyage; I will give you a clear bill of sale of her; manage her as your own; and give her back to me when she clears herself, as she will do at these rates. He said—No; she could not go on a voyage; Mr. Vaughan said he was then acting for others, and was doing the best he could for their own interest. In the meantime I kept writing to the firm of D. & T. Vaughan, at Saint John. The ship went to sea. Ultimately a letter did come from the firm of D. & T. Vaughan. [Letter put in.] This is one of the letters I received from D. & T. Vaughan; it is dated 15th January, 1866. The ship sailed on a voyage then. There was a letter come to Miller & Mossman, from D. & T. Vaughan. The ship went on a voyage to Melbourne, Australia; she took a general cargo and emi-

grants. At the request of the Attorney General, I copy the letter just put in, which is in words and figures following:

SAINT JOHN, N. B., 15th January, 1866.

JAMES SMITH, Esquire.

Dear Sir—Your esteemed letter, of the 14th, *via* Portland, came safe to hand—too late to answer, *via* Halifax, last mail. We hardly know what to say about you fitting out your ship; it will somewhat upset our arrangements. We cannot think of advancing any more money; we have now advanced more than double what we expected. A mortgage on a ship is very poor security; they are liable to so many accidents that cannot be covered with insurance.

However, in consulting Mr. David, we have concluded to let you send her to sea, if you can get any person to fit her out for you. You will have to be particular in selecting a good Master for her: we find nearly all depends on the Master, whether the ship makes money or not. We shall write Messrs. Miller & Mossman to insure our claim on her.

The Mortgage,.....	\$40,000.....	£8,333 6s. 8d. stg.
On Freight,.....	8,000.....	1,666 13 4 "

£10,000 0s. 0d. stg.

We have not heard what is left to our credit on the freight.

You will please to understand we only consent for her to go this one voyage. We hope this will meet your views.

We remain, yours, truly,

D. & T. VAUGHAN.

The only freight she had then earned was from Saint John to Liverpool; that was up to the receipt of that letter. The nett freight from Saint John to Liverpool was eighteen hundred and forty pounds (£1,840). She took a general cargo and passengers out to Australia: I know what her gross freight out there was. She would carry twenty-three hundred tons of coal. I had conversations with Henry Vaughan and Thomas Vaughan as to what happened to the ship on her voyage out to Melbourne. The insurance papers were sent to Miller & Mossman concerning the accident that had happened to her. The conversations were about the protest, the average statement, insurance, and the recovery of the amounts insured, from the underwriters, upon the ship. I know that Mr. Vaughan had insurance upon their interest in the ship; the policies were made out, and endorsed over to them, for £10,000 stg., according to that letter just read. Thomas Vaughan told me he had got something on account of this insurance. I had something insured on her. I conversed with Thomas Vaughan concerning the insurance I had on the ship; he wanted me to give a power of attorney to John Miller, of Liverpool, to collect the insurance for me. Mr. Vaughan mentioned to me the amount, and I mentioned it to him. My share of the loss was £1,500. The insurance papers came out to Miller & Mossman, and were handed to each of us, as we wanted them: they came from Melbourne to Miller & Mossman. I don't know whether they were in this country or not, but I saw them in Liverpool. I told Mr. Vaughan I would not give Mr. Miller any authority to collect the insurance, but I would give it to him, or wait until I went to Liverpool myself. He said that would do; and I gave him a letter to collect it. [Mr. Barker objects to the witness stating what was in the letter. The Attorney General calls for the letter under the notice to produce. Mr. Barker says there was no notice given to produce it.] I heard from Messrs. Vaughan that they got their insurance. They named eleven hundred and twenty-one pounds, less some small

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charges, as the amount they received: this was sterling. She went from Melbourne to Chincha Islands. I talked with Mr. Vaughan about where she went. *Q.*—As the result of the conversation with Mr. Vaughan, where did you understand she went? [Objected to.] *Ans.*—Not pressed. *Q.*—Do you know, from conversations with Mr. Vaughan, where the ship went? *Ans.*—She went to the Chincha Islands from Melbourne; she went there in ballast. I had a conversation with Mr. Vaughan about the ship being at the Chinchas. *Q.*—Had you a conversation with any of the Messrs. Vaughan about paying off a bottomry on the ship at the Chinchas? *Ans.*—Yes; I had with Mr. Thomas Vaughan; it was in D. & T. Vaughan's office, in Saint John. When word came from Miller & Mossman to D. & T. Vaughan, they sent for me to go down to the office. I went. They read the letter about the bottomry being given in Melbourne [objected to by Mr. Barker] by the Captain—Captain Griffiths—on the "*Palm Tree*." The amount was not stated; it was payable three days after her arrival at Callao. He asked what was going to be done about it—how it was going to be taken off. I told him I had not wherewith to take it off; and that for the protection of all hands, they had better pay it off; that she was a new vessel, and the insurance would pay all. He said that the thing was to get the funds there—that is, conveyed there. He said, we will get an acceptance or Bank credit from the old Bank; and he thought Captain Athol Betts could be got to go on and release the bottomry, and as he passed on through New York he could get it endorsed by a Bank there, and when Captain Betts got there and knew the amount, that would enable him to draw for it. He agreed then to arrange it in that way.

Adjourned until 7th instant, at two o'clock, P. M.

June 7th, Two o'clock, P. M. Present as before.

Evidence of James Smith resumed.

That ended the conversation. Then he saw Captain Betts, and then he, Thomas Vaughan, told me that he had agreed to go to Callao, and he did go. Capt. Betts got there the day after the ship got there. [Objected to.] *Q.*—How do you know Capt. Betts got there. *Ans.*—I know it from letters I received from Captain Betts and Capt. Griffiths, the master of the ship. I only know what Captain Betts did there from letters I received from Captain Betts and Captain Griffiths. I subsequently learned what Captain Betts did there from himself personally. He gave me the information when he came back. Mr. Henry Vaughan was present at some of the conversations had with Captain Betts after his return. The principal conversations were had in England. [The Attorney General here calls for any letters that Captain Betts may have written to the Messrs. Vaughan.] Mr. Barker admits having received a second notice to produce, dated 6th June, 1871, and received the same day at one quarter past seven o'clock in the evening. Mr. Barker says there is no evidence as yet to show that Captain Betts ever wrote any letters to Messrs. Vaughan, or that there are any in their possession. *Q.*—State any conversations you had with Captain Betts relating to any transactions he had concerning the *Palm Tree* at Callao, in the Chinchas. [Mr. Barker objects to conversations with Captain Betts being admitted.] *Ans.*—He said when he got to Callao, and seeing the guano charter party, with Captain Griffiths, it provided for all disburse-

ments at Callao and the Chinchas for the *Palm Tree* to be paid by the guano charterers at Callao. He took advantage of that, and drew the guano freight, as much of it as paid the disbursements, and took off his bottomry. He said he drew as much of it as would do that—that is the bottomry that incurred at Melbourne, and he took another bottomry in his own name, adding fifty-five per cent. on the amount advanced. He did not say what was the amount of the first bottomry; and with a portion of the money that he drew on account of freight he disbursed the ships *Sarawak* and *Euridice*. These ships were owned by the firm of D. & T. Vaughan, so far as I know. It was not at my request that he disbursed those two ships. I was not at all interested in those ships. I did not request Captain Betts to take the second bottomry. I had conversations with Messrs. Vaughan concerning this bottomry. The second bottomry was never given up to me. The greater part, if not all of these conversations with Captain Betts were in the presence of Mr. Henry Vaughan; the substance of them was [objected to.] Captain Betts said also that he gave the bottomry bond to Mr. Vaughan. I asked Captain Betts for it. The first time I asked him he said he would keep it for himself; and then in London I insisted on him giving it to me, and he said he gave it to Mr. Vaughan: this was the second bottomry bond that we talked about. [The Attorney General here calls for the bottomry bond under the notice to produce. Bond produced and put in evidence.] I got no account of the freight of the *Palm Tree* from Callao; but from her tonnage she would carry twenty-two hundred tons of guano; the rate of freight was £3 10s. per ton. [Objected to, as witness says he derives his knowledge from the charter party.] I have other means of knowing what the freight came to. Thomas Vaughan told me the freight was three pounds ten shillings per ton. I saw the charter party. The ship went to the United Kingdom: she first went to Queenstown for orders. I was at Queenstown when she arrived there: she was ordered to London. The charterer usually gives the orders. Messrs Miller and Vaughan enquired of the charterers to find out where she was to go, and they, Messrs. Miller and Vaughan, sent me word that she was to go to London, and I gave the directions accordingly to the ship. I did not want the ship to go to London. [Objected to.] Q.—Do you know how she came to go to London? Ans.—From what Mr. Vaughan told me (I mean Henry Vaughan) they allowed Carter & Bonnett, their agents, fifty pounds to allow the ship to go to London. Lloyd, Low & Co., they were agents under the charterers at London. I knew nothing about this fifty pounds being allowed until afterwards. If I had been consulted I would not have done it or consented to it. [Objected to.] The port of London is more expensive and harder to get to than the general run of ports; there is more towage to it, and the other expenses and disbursements are more heavy. The ship went to London. Q.—Do you know where the ship would have gone to had it not been for this fifty pounds. Ans.—[Objected to.] Lloyd, Low & Co., [conversations with Lloyd, Low & Co. objected] told me that she would have discharged at Queenstown or Liverpool as they wanted guano at Queenstown, but that Messrs. Miller & Vaughan wanted her to go to London, and offered fifty pounds to have her go there. I knew that Mr. Vaughan did something with the ship when she was in London. He said he got his lawyer to put a stopper

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on the freight, so that no one could get any of it only what would pay off the Captain and sailors, only themselves. [The letter shown the witness the witness, says is in the hand-writing of Mr. Henry Vaughan: the letter is put in, dated June 19, 1867.] I do not know the amount of her freight inward to London, the guano freight, I never got an account of it; it ought to have been eight thousand pounds or over. [Objected to.] Captain Betts came from Callao to St. John, and then went to England. I saw him in England. I did not know of his going to England until I saw him there. I did not authorize him to go to England from here. He was not there on my account. Mr. Henry Vaughan was not there on my account. The *Palm Tree* when she got to England was in very good order; it is rarely you will see a ship in such good order; I refer to her arrival from Melbourne. After she first went to England from here she was classed seven years at Lloyd's and coppered on an average of twenty-three feet up; got her extra chains and anchors; got (from the bills) forty-five sails. [Objected to.] She cost before she left for Melbourne from Liverpool over four thousand pounds in outfits (whenever I mention pounds I mean sterling). It does not take much of an outfit to cost three pounds a ton. She was sold in London. I know it from letters I received from different parties, and from conversations I had with Mr. Vaughan. Mr. Vaughan told me the ship was sold, that he sold her, and his brother, William Vaughan, bid her in; or that she was knocked down to him. Henry Vaughan told me afterwards that he himself sold her to a friend of his for ten thousand pounds. He did not tell me who his friend was. I do not know who is owning and sailing her now. In the case of the *Palm Tree*, Lloyd, Low & Co. were Messrs. D. & T. Vaughan's agents in London. *Q.*—In January or February 1866, and before the vessel sailed for Melbourne, do you recollect Messrs. Miller and Mossman stating anything with reference to a letter having been received from Messrs Vaughan. [Objected to.] *Ans.*—Yes. Mr. Miller spoke of such letter after I received the letter from Mr. Vaughan of January 15th, 1866, put in evidence yesterday. I had a conversation with Mr. Peter Miller, of Miller & Mossman. He alluded to a letter that he had received from Messrs. D. & T. Vaughan from St. John. He had the letter in his hands. [Attorney General calls for the letter, or the letter press copy of the same, under the notices to produce. Mr. Barker objects, that so far as the letter is concerned, it is to Miller, Mossman & Co., just proved to be in their possession; and that so far as the press copy is concerned, it is not shown that he ever had a press copy of it, and if he had, it would be the letter that would be evidence and not the press copy of it.] I have been in Messrs Vaughan's office, and seen them make letter press copies of letters made there, and have seen letters copied there in the letter press by Mr. Robinson, their clerk. After receiving that letter of the 15th January, 1866, I had a conversation with Messrs. Miller & Mossman. [Objected to.] I wanted the vessel to carry coal from Birkenhead to Aden. I could have got the same charter, forty-seven shillings and six pence per ton, that was offered me before by Prichard. I did not take it. Mr. Miller said she must go on the voyage that would make the most money, for they had Mr. Vaughan's interest to look after as well as mine. He said that they had orders from Messrs. Vaughan to get security by policies on the ship, and they must take the

largest freight they could get, so as to make the most money. I told him the largest and best freight, and least expensive, was a coal freight, as the ship was easiest fitted out for that voyage, and they would get the whole freight paid down if they required it, and any way they would get three-fourths paid down, and the balance to secure disbursements. They wanted her to go with passengers to Melbourne. I told them to have nothing to do with passengers, that I always lost money on passengers. Mr. John Miller in the meantime came along, and said [objected to] he would see about the passenger freight. I urged the coal freight still, and they said they had Messrs. Vaughan's interest to look after, and they wanted to get the largest freight, and that was a passenger freight. I said there might be more money in passengers, but less for the owners.

Adjourned until Friday, June 9, at four o'clock, P. M.

June 9th, 1871, four o'clock, P. M. Examination of Mr. Smith resumed.

I referred, when I spoke of the Millers who said they had Mr. Vaughan's interest in view, to Mr. John Miller and Mr. Peter Miller; they were both present. They wanted her to go on the passenger freight, and I wanted her to go on the coal freight at Aden. I said there might be more money in the passenger freight at present, but when the charges were all paid they would see there was more money in the coal freight. They did agree for the ship to go to Melbourne, and John Miller got up an agreement and submitted it to me: it was the most binding document on me I ever saw. [Objected to.] I declined to sign the agreement. They drew up another on better terms, and that was signed. It was with James Baines & Co. I do not know where that agreement is. I had it in my possession to read it and to sign it. It was last I knew of it left with Baines' lawyer. The ship had extensive outfits for that voyage. I cannot tell who paid for them. The Messrs. Vaughan did not, so far as I know, pay for them. They never alleged to me that they paid for them. Q.—If they had paid for them, would you have known of it? [Objected to.] Ans.—I think I would. They never intimated that they had paid for them; and it's no use, they never did pay for them. I know within a trifle what the freight was at Melbourne from Liverpool. [Mr. Barker here asks the witness if he has the knowledge from written statement. The witness says he does not get it solely from writings. Objected to.] Q.—State the amount of freight from Liverpool to Melbourne, so far as you get your information apart from writings. Ans.—Seven thousand two hundred and twenty-nine pounds and some shillings sterling, and some additional received afterwards by John Miller from Baines'. Q.—Apart from writings, do you know how this freight was payable—how much at Liverpool and how much at Melbourne. Ans.—[Objected by Mr. Barker that a charter has already been spoken of in evidence, and he must derive his information from that, and therefore cannot now tell the contents of it.] It was payable about one-half in Liverpool and one half in Melbourne. The charterer told me this, and he also told John Miller the same when I was present. [The Attorney General asks the witness to look at a paper. Mr. Barker objects.] Q.—Did you ever see this before? [The paper is put in the hands of the witness.] Ans.—Yes, I have seen it often before. I got it from James Baines at his own office, and at the request of John Miller and

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myself. [The Attorney General here tenders the paper in evidence as the freight list of the *Palm Tree* from Liverpool to Melbourne. Mr. Barker objects that there is no proof that it is the freight list, and if it were, that the plaintiffs could in no way be bound by it, and that it is irrelevant.] Q.—What did you and Miller ask Baines for when you got that paper? Ans. [Objected to, for the reason that conversations with witness and Baines are inadmissible, and that the question is too leading.] We asked him for the account of the outward freight. We got an account of the passage money as well as passenger freight. [The paper is again put in the hands of the witness, and he is asked if it contains the freight list and the passenger freight as well.] The witness says this is the freight list exclusive of the passenger freight. The ship when she went out suffered a loss. I had some insurance upon her, (£13,000) thirteen thousand pounds. There was due me on it, by the average statement, (£1500) fifteen hundred pounds. [Objected to.] I had a conversation, chiefly with Thomas Vaughan, about the insurance. When he received the papers about the insurance he told me of it, and the amount due me was talked over. He said Miller had written out for power to collect it, and he wanted me to send Miller a power of attorney to collect the insurance, but I said I would not give it, but that I would give one to him, Thomas Vaughan or David Vaughan, and I gave one to Thomas Vaughan. [The Attorney General here called for the power of attorney from James Smith to Thomas Vaughan to be produced, under the notice to produce, which power of attorney he says was to enable him to collect insurance upon the *Palm Tree*. Not produced.] This power of attorney was to collect a portion of the insurance coming to me from the loss. He was going home, and I had every confidence in him, and I gave him the power of attorney to collect the insurance according to the average statement. Mr. Vaughan never paid me any of these moneys collected from these insurances. Q.—Will you state what conversation you had with Thomas Vaughan about the insurance and giving the power of attorney before you gave it? Ans.—Mr. Vaughan sent for me to go and look at the insurance papers. I went to his office, the office of Messrs. D. & T. Vaughan; he said to me Mr. Miller is our agent, and has sent out for power to collect the insurance on the *Palm Tree*, as per the average statement. The power he asked for was power to collect the insurance coming to me. Then I told him that I have stated before, that I would not give the power to Miller, but I would give it to him. Mr. Vaughan said he would collect it and do anything he could. The bottomry was not covered by the insurance. It was first offered the coal freight by Prichard late in the autumn of eighteen hundred and sixty-five. The time I received the first offer for sale from Captain Lindsay was about twenty days after he arrived at Liverpool from here: the next offer I had for the ship was from the Aberdeen man—was about two months after that—I think about three months after it. The offer from Major was about December, in the year eighteen hundred and sixty-five. The next offer was a little before she was sold on for Melbourne. This would be in April, eighteen hundred and sixty-six. Q.—Why did you not sell the ship to Lindsay. [Objected.] Ans.—It was because Miller said to me, if I would take that he could get me a purchaser for her with whom there would be no trouble about the pay;

and he added that a person would be a fool to take that price, knowing that ships would rise in the spring. *Q.*—What would have been the gross freight for coals to Aden? *Ans.*—[Objected to.] About between five and six thousand pounds. The outfits for the coal voyage would not have been much—nothing compared with the voyage to Melbourne. When I gave Messrs. Vaughan's a mortgage upon the ship I had not had any settlement with them; I never had a settlement with them to the present day. The reason there was no settlement before I gave the mortgage was, the transaction was not done; and when the time came to settle we will do, they said, what is right. I mean when I say the transaction was not done—when the ship would go home she would be sold or go on a voyage. I never received any moneys from the Messrs. Vaughan than what is covered by the securities to which I have referred. The two mortgages on property and the one on the ship, nor as much as is included in the total mortgage on the ship. That is as much as is included in all the mortgages. I was about commencing building the ship when I got the first moneys; and all the moneys I got from Messrs. D. & T. Vaughan were with reference to the ship; it all went into the ship, and it was expected it would all come out of the ship. [Last part of the answer objected to.] When I say all was to come out of the ship, I mean that the ship in sailing or being sold would pay all the moneys I received from Messrs. Vaughan. All the advances from Messrs. D. & T. Vaughan were in cash or outfits, and charged by them in the way they have done. They bought the outfit out here for her. I never saw an invoice from them in my life, nor bills of lading. I saw an invoice of some things for the ship in Mr. Robinson's hands, but I never had one of them in my hands. I had no means of knowing, apart from what they told me as to what was the value of the goods I got from them. The goods were got in this way: I would give them a memorandum of what I required, and they would ship them out. The cash I got from them would be used in purchasing timber and paying for labor.

Adjourned till Monday, 26th June, at two o'clock, P. M.

June 26th, 1871, two o'clock, P. M.

Mot pursuant to adjournment. Present—Mr. Forbes, on the part of the plaintiffs.

Mr. Forbes says—That inasmuch as the defendants are not here to call any more testimony, or go on with the examination of any more witnesses, or put in any more testimony, he does not call any more witnesses, and closes here, and demands that all the evidence be here closed. [I informed Mr. Forbes that Mr. Morrison had called upon me in the course of the morning, and said that he had seen Mr. Barker, and they had agreed to postpone the further meeting, for the purpose of taking testimony, until Monday next, at two o'clock, P. M.]

July 3d, 1871, two-and-a-half o'clock, P. M.

Present—Mr. Barker and Mr. Forbes for the plaintiffs; the Attorney General for the defendants.

Examination of James Smith resumed.

The money was not all gotten in a lump sum, but from time to time, I required it. The Queen's square mortgage was the first mortgage that I gave. This paper is the mortgage of the Queen street property. Mortgage put in, dated 13th December, 1864, from James Smith and wife to David Vaughan, Thomas Vaughan, Henry Vaughan, and Simeon Vaughan, for £2,000, payable in three years, interest half yearly.] I gave this mortgage for money to build a ship—the ship called the *Palm Tree*. At the time I gave the mortgage upon the Prince Wm. street property I did not receive amount for which the mortgage was given; nor had I received that amount before. My conversations, when I received the money on the mortgages, were chiefly with Thomas Vaughan. The mortgage on the Queen street property is paid off, with all interest upon it. I know this of my own knowledge. My dealings in all these transactions were with "D. & T. Vaughan." The firm of D. & T. Vaughan was composed of David Vaughan, Thomas Vaughan, Henry Vaughan, and Simeon Vaughan. [Paper put in witness' hands, and he then says.] This is an account rendered to me by Messrs. D. & T. Vaughan. [Account put in.] In this account I am charged with certain invoices of goods. I may have seen the invoices; but I never got any of them. I mean by saying that I may have seen them, that I may have seen them at D. & T. Vaughan's office. The gross amounts were sometimes given me on slip of paper. I have no means of knowing that the amounts charged were the amounts of the invoices. I had no transactions with D. & T. Vaughan in 1864 and 1865, except what are stated in my evidence. The transactions in this account, covering a period from 1864 to 1865, are wholly on account of the *Palm Tree*. The money was received upon orders given upon D. & T. Vaughan, as it was required—I mean my own order. During the time to which I have referred, I gave no other than the two mortgages upon real estate, and the one on the ship; and these are the three referred to on the credit side of the account. The charge of two-and-one-half per cent. commission on forty thousand dollars, is the excessive interest to which I have referred. The charge of twenty-five days interest on sterling remittances on \$11,647.85, amounting to one hundred and forty-three dollars and fifty-eight cents, is a charge upon and about which I know nothing. The insurance charged in the account, as upon ship *Palm Tree*, of 29th April, 1865, £290 sterling is charged twice—once here in this account, and then in Miller & Mossman's account. Thomas Vaughan told me the insurance was effected in England. I never saw the policies. It is charged improperly in either Miller & Mossman's account, or in D. & T. Vaughan's account. The charge, dated August 18, 1864, duties per *Eleanor*, \$30.36; I have no means of knowing that this is a correct charge: the charge, dated August 23d, 1864, duties per *Princess Royal*, \$156.40; I have no means of knowing if this is a correct charge; I have no means of knowing the charge of freight per *Eleanor*, \$78.40, is correct: the charge of top wharfage, \$4.14, September 3rd; I have no means of knowing if it is correct: September 7th, 1864, there is a charge for top wharfage for *Sea Gem*, \$1.84; I have no means of knowing whether that is correct or not: the charge of September 7th, 1864, freight for *Princess Royal*, \$92.97; I have no means of knowing if this is correct or not:

the charge of 20th September per *Eleanor* and *Princess Royal*, \$3,264.48, invoice of sundries; I have no means of knowing if this charge is correct: the charge of 20th September, 1864, per *Sea Gem*, invoice of sundries, \$48.14; I have no means of knowing if this charge is correct: the charge of 21st September, 1864, freight per *Sea Gem*, \$377; I have no means of knowing whether this is correct or not: the charge of the 30th September, 1864, top wharfage, \$3.80; I have no means of knowing if this is correct: the charge of seventeen cents top wharfage, 23d September, 1864; I have no means of knowing whether this is correct or not: the charge of October 5, 1864, telegraph about treenails to New York; I have no means of knowing whether this is correct or not: the charge of October 31st, 1864, fourteen bars of iron, \$68.67; I have no means of knowing whether this charge is correct or not. [Mr. Barker here objects that the evidence is irrelevant, and that the witness should not go on stating what he does not know, but should state what he does know.] The charge of November 17th, 1864, freight of treenails, \$365; I have no means of knowing whether it is correct or not: the charge of December 2d, 1864, invoice of treenails, \$309.80; I have no means of knowing if this charge is correct: the charge of December 31st, 1864, invoice of sundries per *Raven*, \$2,567.52; I have no means of knowing whether this charge is correct or not: the charge of January 14th, 1865, duties per *Raven*, \$96.76; I have no means of knowing whether this is correct or not; the charge of January 25th, 1865, top wharfage, \$10.63. I have no means of knowing whether this charge is correct or not: the charge of February 3d, 1865, freight per *Raven*, \$264.40; I have no means of knowing whether this charge is correct or not: the charge of 15th February, 1865, \$5.60; I have no means of knowing whether this charge is correct or not; the charge of March 13th, 1865, thirty bars of yellow metal, \$450.52; I have no means of knowing of the correctness of this charge: the charge of March 20th, 1865, invoice of sundries per *Kalos*; I have no means of knowing if this charge is correct or not—the charge amounts to \$5,767.44: the charge of April 19th, 1865, the duty per *Kalos*, \$220.66; I have no means of knowing whether this charge is correct or not: the charge of 26th April, 1865, freight per *Kalos*, \$207.70; I have no means of knowing whether this is correct or not: the charge of May 9th, 1865, four chaldrons of coal, \$22; I know we got coal, but I don't know the particulars: the charge of 24th June, 1865, canvas per bill, \$138.79; I know nothing of the correctness of this charge: the charge of 28th June, \$30.57, for canvas; I know nothing of the correctness of this charge. There was no settlement before I gave the mortgage on the ship. At the time I gave the mortgage on the ship I had not received from D. & T. Vaughan the sum of \$68,000 in money or in money's worth. Messrs. D. & T. Vaughan went into possession of the Prince William Street property, and have been receiving the rent for it since the first day of May, 1868. The Prince William Street property is the property for which this suit is brought to get a decree of sale. The rents are as follows: In May, 1868, the tenants were paying as follows—in all the sum of three hundred and seventy pounds per year. This was the sum for which it was then rented.

Adjourned until Tuesday, fourth July, 1871, at three o'clock, P. M.

Royal, \$3,264; if this charge is correct, the invoice of *Gem*, invoice of \$377; I have no charge of the means of knowing the cargo, 23d Sep this is correct or treenails to New York or not: the cost; I have no [Mr. Barker] witness should state what he does of treenails, \$3; not: the charge have no means of number 31st, 1864 means of knowing January 14th, 1865 whether this is a charge, \$10.63 correct or not: the cost; I have no : the charge of ing whether this is, thirty bars of the correctness of sundries per correct or not—the cost, 1865, the duty on this charge is per *Kalos*, \$20; correct or not: the I know we go 4th June, 1865 correctness of this I know nothing until before I gave charge on the ship \$8,000 in money into possession of receiving the rent from William Street port at a decree of sale are paying as for pounds per year.

July 4th, 1871. Met pursuant to adjournment. Present, Mr. Barker and Mr. Forbes, for plaintiffs. The Attorney General, for the defendants. Examination of James Smith resumed. The *Sarawak* was disbursed at Callao out of *Palm Tree's* freight, and the disbursement would amount to about seven hundred pounds. Q.—Do you know whether the *Sarawak* received from the *Palm Tree* anything else than disbursements. Ans.—Captain Betts told me that he had given the *Palm Tree's* gunboat to the *Sarawak*. This boat cost in Liverpool forty-five pounds. This was the cost of the boat in 1866. There was also some water casks taken from the *Palm Tree* for the *Sarawak*. The water casks cost twenty-five shillings sterling apiece in Liverpool. [The statements of Captain Betts are objected to by Messrs. Barker and Forbes.] Messrs. Vaughan received papers from Captain Griffiths. I don't know that they had any control over him. The papers they received from him were the protest, the average statements, vouchers and survey. All these papers were in reference to the injury the *Palm Tree* received on the voyage out to Melbourne. These papers were submitted to me through Mr. Vaughan. I never instructed Captain Griffiths to send the papers to the Messrs. Vaughan instead of to me. I never received any account of the disbursements of the *Palm Tree* at Melbourne or London. I saw a statement of the disbursements at Callao in the Captain's books, but I never saw the originals. The accounts were sent to Miller & Mossman, of Liverpool. They probably would have been sent to James Baines & Co. if they had not failed. I do not know who has the account of the disbursements at London. I have not got them. Q.—What would be the customary disbursements of a ship such as the *Palm Tree* at Melbourne? Ans.—They would vary from eight hundred to twelve hundred pounds. Objected to.] At Callao her disbursements would be at or about eight hundred pounds. At London her disbursements would be under six hundred pounds. The cost of discharging her would be from one hundred and ten to one hundred and twenty pounds. Messrs. Lloyd, Low & Co. were the London agents of Messrs. D. & T. Vaughan, in the case of the *Palm Tree*. Henry Vaughan told me the ship was first sold to his brother William Vaughan at Lloyd's rooms in London, and that he, Henry Vaughan, sold her after that to a friend for ten thousand pounds. I do not know who this friend was. Beyond what the Custom House said, she had over four thousand pounds of outfits put upon her in England. Before she left on the voyage she was worth ten pounds per ton. She had three years copper on her and a good outfit in her. I am sure I could have got that for her at Liverpool. The selling her at London was a great deal more disadvantageous to my interest than if she were sold at Liverpool. I never knew a ship-owner to send a ship to London to sell unless under very peculiar circumstances. It was no port to sell. I received no money, not even to the amount of a cent or a penny, from Messrs. Vaughan's in England on account of the *Palm Tree*. The disbursements at Queenstown I paid to the amount of forty pounds ten shillings, by a thirty day bill on Lampart & Holt. I did not get this money, or any part of it, from Messrs. Vaughan. I asked Henry Vaughan for it, and he said they had no money. He said I might see Captain Betts about it, and he might give it to me. I saw Captain Betts, and asked him for it, and he declined to pay the money. I went into Lloyd,

Low & Co., and asked Lloyd for the money to retire this bill. He said he got express orders from Mr. Vaughan to give me no money [conversations with Lloyd objected to by Mr. Barker], and he gave me none. I then wrote to Lamport & Holt [objected to by Mr. Forbes that the contents of the letter should not be gone into], to retire the bill, which they did. I had other conversations with Henry Vaughan in England concerning this business. I asked him for some money on account of ship's freight to pay my board in London and my passage out to St. John. He said he had no money for me, and did not give me any, and I had to apply to Messrs. Lamport & Holt for money to pay my bills there and bring me home, and I got from them one hundred pounds for that purpose. I do not know positively that Lloyd, Low & Co. were agents for D. & T. Vaughan in anything except the *Palm Tree*. Henry Vaughan told me that Lloyd, Low & Co. negotiated guano freights for them. I never received any money from first to last from Messrs. Vaughan, or any other person, out of the *Palm Tree*, on account of the sale of her or anything earned by her.

Adjourned until Thursday the sixth day of July, 1871, at 2 o'clock, P. M.

July 6th, 1871, two o'clock, P. M. Met and adjourned till July 8th, 1871, at eleven o'clock, A. M. Present as before.

JULY 8th, 1871, eleven o'clock, A. M.

Cross-examination of James Smith by Mr. Barker. I am sixty-eight years of age last February. I have a good memory : it is as good as ever it was. I commenced to build the *Palm Tree* in the winter of 1864. I built her at the foot of Princess Street ; the place had not been used as a shipyard before : it was Corporation ground. I paid twenty-three pounds currency ground rent for the ground. I first applied to the Messrs. Vaughan for money in the autumn of 1863 or 1864. It was with regard to getting a loan of money to build the *Palm Tree*. I applied for it before I began the building of the vessel. I applied for the loan with a view of building the vessel. There was no sum mentioned. I applied for what amount I might require to build the vessel. I did not state to him what sized vessel I intended building. I did not, to my knowledge, before any money was advanced to me, say to them what sized vessel I intended building. I recollect at that time of no conversation about the size of the vessel before I got any money ; but after they had agreed to advance money to me, I had a draft of the vessel made. I do not doubt but at the time I applied for money we talked about building a ship of about one thousand tons ; but I thought it was better to build a larger one, as the larger the vessel the more money there would be in it. I never said to them the exact sum I needed. I never said to Mr. Thomas Vaughan, or any of the Messrs. Vaughan, to contract for me in England for the sale of a vessel of about one thousand tons. Mr. Vaughan never communicated to me that he had contracted in England for me for the sale of a vessel of about one thousand tons, nor that he had contracted for the sale of this vessel of the burthen of about one thousand tons. We commenced actual work on the ship in the spring of 1864, in the months of March, April and May. We were

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engaged getting material all through the winter. I knew when I laid the keel of what tonnage the vessel would be within a few tons. I knew what tonnage she was to be when I drafted her. She was drafted in the autumn of 1863. I knew then of about what tonnage she would be, and I knew then that her tonnage would be about what she ultimately measured, some fifteen or sixteen hundred tons. I then knew about what she would cost. I expected she would then cost about nine pounds currency a ton, for hull, masts and spars. Although I knew of the size of the vessel, and the probable cost of her, I did not mention those things to Messrs. Vaughan when I applied for the money. The first money I got was in January 1864. I did, before January 1864, communicate to Messrs. Vaughan that I was drafting a vessel, and the size of her. I don't remember that I told them the probable cost. I had money of my own to put into this vessel. I cannot remember how much. I know my son put in seven hundred pounds: that was in addition to what I put in myself. I don't think there was a thousand pounds of my own money put into the vessel. I think there were nine hundred pounds of my own money put into her, in addition to the seven hundred pounds put into her by my son. I kept books at that time—my son kept the books; I last saw them at my house on King square. Robert was assisting me at the ship-yard. It cost a large sum of money fitting up the place as a ship-yard, and putting up wharves there. I cannot tell exactly how much it cost; I did not charge my memory particularly with it; it would be as much as one thousand pounds currency. Robert kept an account at the time. He is partly living with me. I left him at Woodstock when I was last there. He was living with me at the time I built the ship. I then kept an account of the expenses of the yard, and every thing. The ship cost, when she was ready for sea, about eighteen or nineteen thousand pounds currency: this includes what was expended upon the yard. My books would tell the cost of every thing. I fitted up the place there with the intention of carrying on ship-building. I built two wharves, a shed with a steam boiler in it, and a blacksmith shop, with tools in it. The yard was fitted up with every requisite in it, to carry on ship-building there; but I had the tools and boiler before. I don't charge my own time in estimating the cost of the vessel. There was nothing put into the vessel outside of what I got from Messrs. Vaughan, except the nine hundred pounds of my own in money or materials, and the seven hundred pounds of my son. Mr. Vaughan, before I began building the vessel at all, agreed with me to advance all the money I might require in the building the said vessel, I to give them collateral security therefor, which security they got. He did not, in the first instance, agree with me simply to advance me five thousand pounds upon the Prince William street property. It was not then understood that that was all that I was to get from him. The first security was given in June 1864. The securities were given as follows: first, the mortgage on the Prince William street property; second, the mortgage on the Queen street property; and third, the mortgage on the vessel; besides this, I gave them some transfer of the yard. Mr. Vaughan agreed to advance me what money I might require to build the ship; and I don't recollect that they ever mentioned any limit. It was not agreed when this five thousand pounds was advanced upon the Prince William street property, that it was all

he was to advance me. After the five thousand pounds were expended, I came and wanted money to finish the ship. I don't think I then made the application to Henry Vaughan. I generally made the applications to Thomas Vaughan. I would not swear that I did not apply to Henry Vaughan. I may have applied to Henry Vaughan for a loan of three thousand pounds on the Queen square property, stating to him that it cost me forty-two one hundred pound notes. The conversation passed, but I don't know whether it was with Henry or Thomas Vaughan, in which they said they would only loan me two thousand pounds on the Queen street property, as they never advanced more than fifty per cent. upon property. I do not know that when this conversation took place that Mr. Thomas Vaughan was in England. The two thousand pounds were advanced, and I gave the mortgage: it was a separate and distinct transaction from the five thousand pounds mortgage. When I arranged for the money in the first instance, I heard nothing about the rate of interest. I presumed the rate would be six per cent. In the first instance there was nothing said about the security, further than this. Mr. Vaughan spoke of security on the Queen square property; but when I first applied for the money, there was nothing said about the security. The agreement was made before I got any money from them, that I was to give security on the Queen square and the Prince William street properties; and they said they never advanced more than fifty per cent. upon properties. There was nothing further mentioned in regard to securities, than upon those two properties. After the two thousand pounds were expended, I applied for more money from Mr. Vaughan, and he declined to advance me any more, unless I paid him eight and one-half per cent. for it. I said, surely you won't ask me more than six per cent. for it. I did not tell him at that time that he had agreed to advance it to me at six per cent. I told him at that time that the vessel was not finished, and that I wanted the money to go on finishing the vessel. That was well understood. *Question*—If Mr. Vaughan had originally agreed to advance you all the moneys that you might require in the construction of this vessel, why did you not then hold him to his agreement, and not state to him that you did not want two accounts, or apply to other parties for money for that purpose? *Answer*—There was no agreement but a verbal one about the money, and the money being expended on the vessel, he wanted further security, and security was given on the ship and yard for the further advances. *Question*—D'ed you at that time when you applied to him for a further loan, make any mention of this verbal agreement? *Answer*—No; he never refused to advance the money. *Question*—Then why did you say anything to him about applying to other parties for the money. *Answer*—If he or they did not do it, I would have to apply to other parties for it, as I did not wish to have two accounts, and if they fell short in advancing money the ship would have to be finished, and I would have to get money from other parties. Mr. Vaughan did agree then to advance me more money. He wanted eight and one-half per cent. I did not agree to pay eight and one-half per cent. I never agreed to pay the extra 2½ per cent., either as commission or as interest. I said, when we come to settle, you will surely do what is right, and not charge the two and one-half per cent. extra. This conversation was with Thomas Vaughan. He also spoke of further

re expended, security, and I gave the further security upon the yard. This conversation led to the further security being given upon the yard. [This is objected to by Mr. King.] This memorandum, "Messrs. D. & T. Vaughan's account, 1st July, 1865," is in my hand writing upon the account rendered me by Messrs. D. & T. Vaughan, and was put there when I received the account. The account was handed to me by my son Robert. I looked over the account. I did raise objections to the account to Mr. Thomas Vaughan before he went home to England. I don't recollect any other person being present. I objected to the commission of 2½ per cent. I did, after the account was rendered to me, make objections to some of the items to Thomas Vaughan. I did not examine this account with my own accounts, so as to make any great objection to it, preferring to wait until we settled up the whole accounts. After this account was rendered my son received money. I presume it was the balance of \$639.29 due me, as appeared by the accounts. *Q.*—On the twelfth day of July, 1865, did you not receive from D. & T. Vaughan the sum of four hundred and eighty-nine dollars and twenty-nine cents? *Ans.*—I did not personally, myself. I have no recollection of getting it, personally myself. *Q.*—Will you swear positively that you did not, on that day, get that sum of money? *Ans.*—I will not swear positively either for or against, but I have no recollection of getting it myself. *Q.*—On the 27th July, 1864, did you not personally get the sum of five thousand dollars from Messrs. D. & T. Vaughan? *Ans.*—No. I have no recollection of that. I have an indistinct recollection of getting money myself once: this was to pay a note of Jewett's, and I am not quite sure that I got it myself. *Q.*—On the sixth day of October, 1864, did you not personally get two thousand dollars from Messrs. D. & T. Vaughan? *Ans.*—I have no recollection of any such thing. I have no recollection of ever getting from Messrs. D. & T. Vaughan any money personally, except the money to pay the Jewett note, to which I have referred, and I am not sure about that. I do not know whether or not the balance of \$639.29 was paid me: my son Robert would know all about that. I have doubts about getting the balance referred to. My books kept accounts of all the monies I received: the accounts were kept in my books by my son Robert. I had access to the books. I could have told what money I had received by examining my books, if the books had been correct. I cannot tell from my books or from my memorandum what monies I received from Messrs. Vaughan. My books may be wrong, although I presume they are correct. I kept a cash book, a day book and ledger. I don't exactly know where the books are now. I presume they are at Woodstock at my son's store. I thought the books would be of no more use to me. I never compared this account rendered me by Messrs. D. & T. Vaughan with my books. The ship took a cargo of lumber from here for Liverpool. I, when she sailed, gave Messrs. D. & T. Vaughan an order for the freight upon Messrs. Farnworth & Ordine; the order was made payable to them—the Messrs. D. & T. Vaughan. *Q.*—I see that you say in your answer that you say you authorized Messrs. Miller & Mossman to receive the freight as agents for D. & T. Vaughan, is that correct? *Ans.*—I must have misunderstood the answer if I said that: what I did was to authorize Messrs. D. & T. Vaughan to receive the freight. I never received a penny piece of the freight of

the *Palm Tree* at any time personally from D. & T. Vaughan or any other person. The order for the freight was given, I think, a day or two before the vessel sailed from here. I don't recollect positively the day she sailed from here. Q.—Did you not, on or about the time the ship sailed from here, and the order for freight was given D. & T. Vaughan get an advance from Messrs. D. & T. Vaughan of eight thousand dollars on account of the freight from here to Liverpool? Ans.—The money was got before the ship sailed against the order that was given on the freight: I mean the order on Farnworth & Jardine. The two thousand pounds currency were received on account of the order I gave for the freight from here to Liverpool. The two thousand pounds currency received from Messrs. Vaughan was an advance paid by them to me on account of the homeward freight from here to Liverpool, for which I gave them an order to receive the freight to pay them. Q.—If this was so, what did you mean by swearing that you never had at any time received a penny piece of the freight or earnings of this vessel? Ans.—I meant on her outward earnings, after she left Saint John to the present date. I did not mean this eight thousand dollars. Her freight from here to Liverpool, after paying her inward disbursements at Liverpool, amounted to fourteen hundred and eighty-one pounds sixteen shilling and one penny sterling, and this was placed to the credit of Messrs. D. & T. Vaughan. The vessel was built to be sold or sailed, as she might have paid best. It was not agreed between Messrs. D. & T. Vaughan and myself that the vessel was to be built and then sent to England to be sold, and you cannot show any such agreement. Q.—Was not agreed before the vessel left Saint John, between you and Messrs. D. & T. Vaughan that the vessel should not sail on voyage from England without their consent? Ans.—There was no such agreement in Saint John. There was no such agreement made in England, except the letter now in evidence, dated 15th January, 1866. There was no agreement made before the date of this letter, or at any other time, that I should not be at liberty to send the vessel out of England without the consent of D. & T. Vaughan, until the mortgage upon the ship in their favor was paid. Q.—Then, if I understand you correctly the vessel went home—from here to England—with full right and power in you, as the registered owner, to sell her there, or to send her on voyage. Ans.—No; I had no such power. I had power to sell her but nothing had been said about sending her on a voyage? Q.—Was there any agreement of any kind between you and the Vaughans, restricting or controlling in any way your power and authority over the vessel in England as her registered owner? Ans.—Not then—not when she went home. Q.—Was there any such agreement made between you after she went home? Ans.—None beyond verbal interference. Q.—Did any of the Vaughans interfere? Ans.—Yes; Henry Vaughan did—that is, Henry Vaughan, the mortgagee—he that is now present he interfered. Along in the winter, after the vessel arrived, about four or five months after her arrival, previous to his interference, I had offers for her purchase; and previous to this, I also had offers for charter to Aden. I considered the offer of the charterer to Aden a good offer and a good charter. The first interference of Henry Vaughan was in regard to this coal freight to Aden. He then said he wanted the ship sold,

They could get their money. He was acting for an estate. She could not go on a voyage, he said; and they could get their interest in the stock as well as out of it. The mortgage on the ship was not due at that time. Q.—Why did you not send the vessel on this voyage, under this charter? Ans.—I wanted to sell the vessel if I could. Q.—Why did you apply to Messrs. D. & T. Vaughan in this country for liberty to send this vessel on a voyage? Ans.—I was deceived by Mr. Miller in making the sale; and I applied to them because I did not wish to do anything with the vessel without their consent. I was in England nearly a year trying to sell the vessel, or do something with her. Mr. Henry Vaughan was there most of the time too. The best offer to buy the ship was from a man by the name of Lindsay; he offered me nine pounds a ton sterling for her. I refused this offer. She was a very expensively built vessel; good as one as I know how to build. I don't think there ever was a better one built in this country. The vessel, from failure of contractors, cost more than she otherwise would have cost. Mr. Henry Vaughan did not urge me to take Major's offer for the ship. M. Vaughan was not when Major made the offer confined to his house with sickness. Adjourned until Monday, the tenth day of July, 1871, at eleven o'clock.

July 10th, 1871, eleven o'clock, A. M. Present as before.

The cross-examination of James Smith resumed.

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I did communicate Major's offer to Mr. Vaughan. Q.—Did not Mr. Henry Vaughan, when you communicated Major's offer to him of eight pounds ten, strongly urge you to accept the offer, and tell you on no account to lose sight of him until you had secured the price offered by him, or words to that effect? Ans.—He did not. He used no such language as that with reference to any of the offers communicated to him. The highest offer I got was nine pounds; I was asking ten. I did not wish to sell for less than ten pounds per ton; ten pounds per ton was the market rate, as appears by the offers made. I did not think the vessel there, and did not sell her, under the impression that the market would improve. That was the reason I did not accept the offer of nine pounds per ton; still I would not have sold her for less than ten pounds per ton, as I had an expectation of sailing her, and the offers were good. Mr. Henry Vaughan did prevent me from selling the vessel. Q.—In what way? Ans.—He would not take Major's payment. That is the only way he interfered with me in that case. Q.—Was that all that prevented you selling to Major? Ans.—That was the chief reason. Major's offer was only eight pounds ten. Q.—If Major's offer was only eight pounds ten, and you had determined not to sell for anything less than ten pounds a ton, how do you undertake to swear that Mr. Vaughan's refusal to take Major's payments was the chief reason why you did not sell to Major? Ans.—Ships were falling. I could not do as I wished to do, because I wanted to get the account closed, and I was willing to sacrifice for the sake of having it done; and as I could not get putting on a coal freight, I was obliged to get doing something. Q.—Then you had concluded at the time Major's offer was made to take eight pounds ten per ton for the ship? Ans.—Yes, as I was situated.

Q.—Had you any offers after Major's? *Ans.*—Yes; there were two—one at seven pounds fifteen per ton, and one at a less rate. Q.—Will you swear that at any time in England Mr. Henry Vaughan refused to take Major's paper, or any of the other person's paper, from whom offers were made? *Ans.*—He did, for the reason I have stated before. Q.—When Major made you the offer, was Mr. Vaughan's mortgage on the ship due? *Ans.*—I do not recollect exactly when Major's offer was made, but it was made before Christmas, I think. Q.—When did Mr. Henry Vaughan authorize you to sell his mortgage interest in the ship? *Ans.*—He never did authorize me, and I never did sell it. Q.—Then when you were offering to sell, you were only offering to sell your own interest in the ship? *Ans.*—I was offering to sell the whole ship—the interest of all parties, both my own and Mr. Vaughan's interest. Q.—What prevented you from selling to Major your interest in the vessel, and leaving Mr. Vaughan to look out for himself? *Ans.*—There was nothing to prevent me selling my interest, of course. Q.—Do you mean to say that Mr. Henry Vaughan ever prevented you from selling your interest in that ship? *Ans.*—He did in this way—that is, would not allow me to sell the ship then, that would have sold my interest? Q.—How long after the 20th December, 1865, did the vessel remain in England? *Ans.*—She sailed on the thirteenth April following. Q.—When did you receive the letter of the fifteenth January, 1866? *Ans.*—In February following. James Baines & Co. paid the vessel's expenses while she remained in Liverpool, after her inward disbursements were paid; they paid as my agents. I don't think they paid it at my request—they paid it voluntarily. Mr. Vaughan did not pay it. There was a ship keeper in charge of the ship; he was generally on board at night. Mr. Miller appointed the ship keeper until Baines took her out of the dock; then they appointed their own ship keeper. Baines took her out of the dock about the first of March, 1866. Mr. Vaughan was never in the possession of the ship, to my knowledge, officially, from the time the vessel arrived in England until she sailed for Melbourne. Q.—Who was in possession of the vessel from the time of her arrival in Liverpool up to the time that Baines' took her out of the dock? *Ans.*—I consider she was in my possession, under the control of these people, Miller, Mossman & Co. and Mr. Vaughan. It appeared when I came to do anything I was subject to them. Q.—When you used the term coming to do anything, what do you mean? *Ans.*—I mean selling or chartering her. Q.—Was it after you received the letter from D. & T. Vaughan of the 15th January, 1866, that the arrangement was made with Baines & Co. [Objected to by Attorney General.] *Ans.*—Yes. Q.—You wanted Messrs. Vaughan to furnish the outfits for the voyage, did you not? *Ans.*—No, not after she got to England. Q.—What did the outfits cost when she sailed for Melbourne? *Ans.*—It amounted to something about six thousand pounds, according to their statements; including the expenses for passengers, about four thousand pounds were spent upon the ship herself: the balance was for provisions and other things consequent upon carrying passengers. These outfits were supplied to the amount of about the six thousand pounds, pursuant to an agreement made between me and Baines & Co. [These proceedings with Baines & Co. are objected to by the Attorney General.] The

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original of this agreement was never, to my knowledge, in this country. I never saw it here. I gave no security to Baines & Co. for these outfits, further than they were to take it out of the outward freight to Melbourne, Baines guaranteeing more than seven thousand pounds out. I gave him a further security. I gave him a second mortgage on the ship to secure against any loss if anything transpired. [Objected to.]
 Adjourned until the 19th July, at eleven o'clock, A. M.

JULY 19th, 1871.

Met pursuant to adjournment. Present—Messrs. Barker and Forbes on the part of the plaintiffs, and Attorney General on part of defendants.

Cross-examination of James Smith resumed. The freight out to Melbourne was seven thousand two hundred and twenty-nine pounds, and then Mr. Miller got something besides; she was chartered out, and then with guano home. The above is the freight out to Melbourne alone. I don't know what the freight from the Chincha Islands home was. I know what it should have been. She was away from England about fourteen months. Aden is a coaling station. I do not know much about the business of Aden. The expenses of outfitting the vessel to go to Aden would not be as much as to fit her out to go to Melbourne. The difference would be in going to Melbourne with emigrants—you have to come under the Government officer and put on what he required. Q.—What would it have cost to have fitted the ship out to go to Aden. Ans.—I do not know. It would not have cost three thousand pounds; it, I suppose, to have fitted her out well, would have cost £2,500. I mean to include coppering. It would cost no more to class a vessel in going to one place than it would in going to another; but the government inspector required a great deal more than was necessary to class her. Q.—What more did the vessel require under the government inspection than Lloyds required. Ans.—She required more sails—I cannot say how many more; more water closets; I recollect of six extra ones. I did not charge my mind with it. I cannot say exactly what the cost would be of putting in the extra water closets; they would cost in all a great deal over fifty pounds. I can't say they would cost more than one hundred pounds. They required more boats and more life-boats; I cannot say how many more. I cannot say, without the bills, what the extra cost of outfitting this vessel out under government inspection would be. The charter I was offered to Aden was forty-seven shillings and sixpence per ton. She was calculated to carry twenty-two hundred tons at that rate. Mr. Laughan did not pay for the outfits furnished by Baines & Co. I did not pay for them. They came out of the ship—they were charged to the ship. The vessel got into difficulty going out to Melbourne. The insurance paid the loss, or would have paid it, if it had been properly looked after; part of it was collected, and part of it was not. Q.—Did not the whole difficulty connected with this vessel arise from Baines & Co. not having paid for the outfits furnished to the vessel, and from the mishaps and accidents that befel the vessel going out to Melbourne. Ans.—No. Q.—What are the other causes of difficulty connected with this vessel, besides the other two that I have mentioned? Ans.—Bad management was the chief cause. Q.—Whose bad management do you

refer to? *Ans.*—The bad management of the Captain was one cause. I believe the agents of the ship in Melbourne did not do right. The insurance of the ship was not looked after properly. The Messrs. Baines appointed Captain Griffiths, with the approval of Mr. Thomas Vaughan. I had nothing to do with the appointment of Captain Griffiths as master of the ship. I knew of his appointment, and consented to it. *Q.*—When you speak of the insurance not being properly looked after, do you allude to Messrs. Vaughan's insurance? *Ans.*—No; that was looked after. I mean my portion of the insurance was not looked after in proper time. *Q.*—Why did you not collect your portion of the insurance? *Ans.*—I was not there at the time to collect it, and it was not properly looked after. Mr. Henry Vaughan afterwards gave me the papers about the insurance, but it was too late. Things turned round so, that it was troublesome to collect, and I did not collect it. I did not try to collect it; but a person—William Strang, of London—tried to collect it for me. I was here in Saint John when I heard of the bottomry bond being put upon the vessel. When Captain Betts went out there, he went out as I expected, as my agent and Messrs. Vaughan's agent, to protect the ship. *Q.*—When did you first learn from Captain Betts what he had done concerning the vessel at Callao? *Ans.*—By letters from him from there. *Q.*—Then, when you speak of what took place at Callao, you speak from what you learned from these letters, do you not? *Ans.*—I learned from these letters what he said he did there; but after that I ascertained a great deal more. *Q.*—When and where did you ascertain the great deal more of what took place at Callao, outside of what you learned from the letters? *Ans.*—I ascertained it in London, after the vessel arrived in London. She arrived there in July 1867, I think. *Q.*—Have you not over and over again stated that you entirely approved of what Captain Betts did concerning the vessel at Callao. *Ans.*—When I was misled I did. After I got correct information I did not. I was misled by Captain Betts' letters, and by Captain Betts and by Henry Vaughan. The whole of the officials that had any connection with the ship misled me; Mr. John Miller also misled me. These were the chief ones. *Q.*—Was there any one else who misled you? *Ans.*—Yes; even the agent of the ship misled me. *Q.*—Any one else? *Ans.*—If the answers I have given you upon this point do not do you, you will be a long time before you get another. *Q.*—In what way did Captain Betts mislead you? *Ans.*—He did not tell me the truth as to what took place. He took a bottomry bond upon the ship in a way that I thought he never would have done. *Q.*—Did he not tell you exactly how he had taken the bottomry? *Ans.*—Not exactly. *Q.*—What did he misstate to you in reference to the bottomry? *Ans.*—He said to me that he must not say too much about the thing [Mr. Barker here objects that the witness is not answering the question put to him], as he would have to give evidence in the matter. He told me this in London. *Q.*—What did Captain Betts misstate to you in reference to the bottomry bond. *Ans.*—He said he took the bottomry bond in Callao, and at fifty-five per cent premium, and that he appropriated the money he drew to taking off the bottomry, and the rest of the money he gave to the Captain of the *Sarawak* to pay bills. *Q.*—What other misstatement did Captain Betts make to you that misled you? *Ans.*—He led me in one place to believe

was one cause. The signatures to all of those papers are by me and in my hand-writing. The next paper is marked N1, and the body of it is in my hand-writing; so is the signature, but the signature to the writing on the back is in the hand-writing of my son Robert. O1: the signature to it is in my hand-writing, the body of it is in Robert's hand-writing, and the signature to the writing on the back of it is Robert's. P1 is all in my writing, both body and signature. Q1 is all in my hand-writing, both signature and body; the signature to the writing on the back is Robert's. R1: both the body and signature of it are in my hand-writing. S1: the signature is mine, the body of it was written by Robert, and the signature on the back of it is by Robert. T1: the signature is mine, the body of it was written by Robert, and the signature on the back of it is by Robert. U1: the signature is mine, the body of it was written by Robert, and the signature on the back of it is by Robert. V1: the signature is mine, the body was written by Robert; the signature on the back was written by Robert. W1, X1, Y1, and Z1, are, both body and signature, in my hand-writing. A2: the signature is mine. B2, C2, D2, and E2, are signed by me. F2, are in white paper and upon blue paper. The one upon blue paper is signed by Robert; the one upon white paper is both in signature and body in my hand-writing. G2, H2, I2, J2, and K2, are all signed by me. L2, M2, N2, O2, P2, Q2, R2, S2, T2, U2, V2, W2, may be signed by Robert; X2 is signed by me. I know Captain Griffith's hand-writing. [A paper is handed to the witness, and he says]—This signature is not written in the way he usually writes.

Re-examination of James Smith.

The pencil marks on the account in evidence are mine. My son Robert received the one hundred and fifty dollars after the last date, July 1, 1865, in the account. After this I received some money from Messrs. Vaughan's, the first to the best of my knowledge that ever I received personally from them in money; the amount I so received was four hundred and eighty-nine dollars and twenty-nine cents. I never after that received any other moneys from them. I received this to pay off some bills before the mortgage was given. I come at those amounts by the pencil marks I made at the foot of the account. I never received from the Messrs. Vaughan any money that was not covered by the mortgages I have given them. They always got security for it. Q.—When you, in your cross-examination, stated that you had given an order on freight and received eight thousand dollars from Messrs. Vaughan on such account, what did you mean? Ans.—The freight of the ship home it was expected would be two thousand pounds, and in this cross-examination I must have got myself confounded in that way. I mean to say I have no recollection of receiving two thousand pounds from Messrs. Vaughan on account of that freight, or in any other way. I got no money from Messrs. Vaughan except the four hundred and eighty-nine dollars after I gave the mortgage upon the ship. I got no money to my knowledge from Messrs. Vaughan except what was included in the several mortgages; no person in my behalf, or upon my order to my knowledge, got any money from Messrs. Vaughan except what was included in the several mortgages. Messrs. Vaughan never made a separate advance to

me of any moneys except what was included in and covered by the mortgages upon the real estate and ship. There never was to my knowledge a separate advance to me on account of freight. Not in St. John.

Adjourned until Friday, the twenty-eighth day of July, 1871, at ten o'clock.

July 28th, 1871. Met pursuant to adjournment. Present as before.

Re-examination of James Smith resumed.

There was no advance to me on account of freight in Saint John, nor any other place, specifically upon freight. I received no consideration for the order which I gave them for freight. I have received no part of the freight of the *Palm Tree* from here to Liverpool. I mean no net freight, after payment of the disbursements inward to Liverpool, which were charged against freight. I was under a misapprehension when I said I had received two thousand pounds on account of the homeward freight from here to Liverpool. The misapprehension arose from our talking about the freight amounting to that sum. I never got any money after the mortgage upon the ship, except the sum of six hundred and thirty-nine dollars and twenty-nine cents, part of which my son Robert got, and I got the rest myself; but the amount was included in the mortgage. In January 1864, the Messrs. Vaughan knew the size of the ship. This was when the first advance was made. The ship was modelled and drafted then, and we were making moulds. When they agreed to advance the money, it was not upon the idea that the ship was to be of one thousand tons. I did not know at first what size she was to be, until after she was modelled and drafted. None of the money I received from Messrs. Vaughan went into fitting up the yard. All the money got from them went into the ship. The yard was fitted up from money belonging to me and my sons. The mortgages were separate transactions—on separate properties, but the money all went into the ship. The money was all for one purpose, to put into the ship. When I commenced building the ship I did not know how much money I should want. The reason I did not sell the ship to Lindsay for nine pounds, [Objected to.] The Attorney General here withdraws this question, and then puts the question as follows: Q.—Why did you not sell at nine pounds per ton? [Objected to.] Ans.—The reason was that Mr. Miller said if I would take that, he could get a party that there would be no trouble getting the money from. [Mr. Barker objects to conversations with Miller.] He afterwards said the party was Mr. Vaughan. Mr. Vaughan never offered nine pounds for her. Freight was better when the ship went over; they improved after the ship got there, and they declined subsequently. I thought I could fall back on Miller's offer at any time. James Baines & Co. furnished the outfits from Liverpool to Melbourne. They received more than paid for the outfits from the outward freight. The outfits were six thousand and odd pounds. [Mr. Barker objects, as witness says he is speaking from the contents.] The outward freight was more than seven thousand pounds. I saw the accounts, and there was something more gotten by Mr. Miller on account of freight. The outfits were paid for out of the freight. In fitting out the ship for the Melbourne voyage, they required side lights to be cut out of the ship

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head lights set, and sky lights put in, companion ways cut, and stair-
ways put in, and berths and water casks; she had two hundred and fifty
water casks, and she had to have provisions for passengers; she would
require more cordage and sails. All these things of which I am now
speaking were extra, and over what would be required for the Aden
voyage, concerning which I have spoken. I never authorized Captain
Betts to take the bottomry bond on the ship, either before he left for
Callao, or before he did take it on her. He was authorized to go there,
and take the bottomry off her, and draw here for whatever he wanted.
He was to get a bank credit from the old bank here, and was to get it
endorsed by a bank in New York, so that his draft in Callao would be
good, and from that source he was to get the money to take the bottomry
off the ship. I never agreed to pay fifty-five per cent. for money for the
ship. Captain Betts told me he got Captain Griffiths to draw the freight,
that is, a portion of the freight at Callao, and with it he paid the old
bottomry off, and then he took a new bottomry upon the ship at fifty-
five per cent.; and what money he drew over, he put to disburse the
Sarawak, or a portion of it. He said he drew more money than he
wanted; but he did not tell Captain Griffiths what he did with it. He
said it would not do for him then to tell me much about it, as he would
be called upon in another place to explain it, and then he would tell. I
did not know when he left here that he could draw the homeward freight
from Callao. He said he took advantage of the clause in the charter,
that provided in the event of the *Palm Tree* requiring disbursements at
Callao, it could be drawn on the homeward freight; so he said he drew
upon this, and paid off the first bottomry, and then put on a new one,
adding fifty-five per cent. The money that paid off the first bottomry
belonged to me. [Mr. Barker objected to all the conversations with
Captain Betts.] Messrs. Vaughan did not advance any money to pay
off the first bottomry, to my knowledge, nor did Captain Betts advance
any for that purpose. Captain Betts misled me in this way. [Mr. Bar-
ker objects.] The Attorney General then puts the following question :
Q.—In what way did Captain Betts mislead you as to what he did at
Callao? Ans.—I wanted [Mr. Barker objects to what he wanted] to get
the whole accounts from him, and the bottomry as well, and said it was
so good, and if it was, it belonged to me. [Mr. Barker objects that this
is no answer to the question, and relates to matters concerning which he
did not at all interrogate the witness upon the cross-examination.] I
also asked him if he would not give the bottomry to me—would he give
it to or leave it at Mr. Strang's, for the benefit of all. He said he would;
and went to Mr. Strang's office, as I expected to give the bottomry to
Mr. Strang; and after he and Mr. Strang had talked a while, he made
his excuse that he had given the bottomry to Henry Vaughan. [All
this objected to by Mr. Barker.] When I came to know what was done
by Captain Betts at Callao, I was not satisfied with it. My misunder-
standing was with reference to the objects for which Captain Betts took
the bottomry. Captain Betts caused the misunderstanding as to the ob-
jects for which the bottomry was taken. He represented that the bot-
tomry was taken for the benefit of all connected with the ship. I was
told by Mr. Wills, the proctor. Captain Betts was not in England for me.
I never gave him any orders to come there, and I knew nothing of him

coming there until he got there. Mr. Henry Vaughan was not in England on my account. I knew from Captain Betts the number [conversations with Captain Betts objected to by Mr. Barker] of casks that were given from the *Palm Tree* to the *Eurydice*. There were twenty casks so given. They cost twenty-five shillings a piece.

JAMES SMITH.

Adjourned until the 29th instant, at half-past nine o'clock.

JULY 29th, half-past Nine o'clock.

Met pursuant to adjournment. Present as before.

The testimony of James Smith was read over to him, and then signed by him.

Adjourned until Friday, the 4th August, 1871.

August 4th, 1871, at 10 o'clock, A. M. Met pursuant to adjournment. Present as before.

Adjourned until Friday, eleventh August, 1871, at ten o'clock, A. M. August 11th, 1871. Met pursuant to adjournment. Present as before.

Adjourned until Saturday, 12th August, 1871, at 2 o'clock, P. M.

August 12th, 1871. Met pursuant to adjournment. Present as before.

Adjourned until the 14th instant, at 2 o'clock, P. M.

August 14th, 1871. Met pursuant to adjournment. Present as before.

Adjourned until the 15th instant, at eleven o'clock, A. M.

AUGUST 15th, 1871.

Met pursuant to adjournment. Mr. Barker and Mr. Forbes appeared for the plaintiffs. The Attorney General appears for the defendants.

Andrew Kenney, called on the part of the defendants, and being sworn says :—

I am a ship captain. I have been sailing as a ship master from twenty-five to thirty years. I have some little experience in the guano trade. I mean by some little experience in the guano trade, that I have been two or three voyages in that trade. I saw the ship *Palm Tree* when she was on the stocks. I do not know how many tons she registered. Q.—How many tons of guano would a ship of fourteen hundred and seventy-two tons register tonnage carry on a voyage from Callao to the United Kingdom? [Objected to by Mr. Barker.] Ans.—She ought to carry over fifty per cent. over her register tonnage. Register tonnage is what is known as new tonnage. Some ships will carry even more than fifty per cent. over the register tonnage. Q.—What would be the maximum quantity of guano that a ship of her size would carry on such a voyage? [Objected to by Mr. Barker.] Ans.—I think she would carry sixty per cent. over her register tonnage; that is to say, a ship of a thousand tons would carry sixteen hundred tons of guano. I have known ships, and been in ships, that have carried sixty per cent. over their register tonnage. [Objected to by Mr. Barker.]

Cross-examination. I don't know anything of the *Palm Tree* particularly. I never saw her except upon the stocks. I do not pretend to say what per centage of her tonnage in guano she would carry. She was a hacmatac built vessel, I believe. A spruce ship of the same tonnage will carry more guano than a hacmatac one. When I have been for

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speaking of vessels carrying fifty or sixty per cent. over their tonnage of guano, I have referred to spruce and pitch pine built vessels. There is very little difference between pitch pine and spruce built ships as to carrying guano. There is very little difference between pitch pine and tamarac built ones. I have made two voyages down to Callao for guano. These voyages were in a spruce ship—the same ship each time. Her register tonnage was one thousand and sixty tons. I brought in her sixteen hundred and eighty-six tons of guano the first voyage, and sixteen hundred and ninety-six tons on the last voyage. There are Government surveyors at Callao who regulate the amount of guano each ship shall take upon a voyage: I mean the Peruvian Government when I say the Government. The vessels loading at Callao with guano are all subject to these Government inspectors as to the quantity of guano they shall take, so far as the draft is concerned: that is, they are allowed to load to a certain draft of water. Q.—I suppose it is a matter for the determination of the master or agents of the vessel, then, as to whether she is to be loaded to the depth allowed by the Government inspector. [Objected to by the Attorney General.] Ans.—Yes, the inspection don't compel them to load to the draft allowed, but does not allow them to go over it. The vessel I had there was the *Eliza A. Kenney*. She was not built by Mr. Smith, one of the defendants. In the two voyages I have spoken of I did not load beyond the depth allowed by the inspection.

—Was your vessel on those occasions loaded deeper than the Government regulations allowed? [Objected to by the Attorney General.]

Ans.—No. My vessel was a fair carrier.

Re-examination. I think my vessel might be called an extra carrier. She was only fairly loaded when she carried guano. She was entirely a spruce ship. She was ten hundred and sixty tons register; her under deck tonnage was nine hundred and forty-nine tons register. Her tonnage was swollen by the tonnage of her poop deck one hundred and eleven tons, which was very large—larger than usual. My vessel from twenty-two feet and upwards of depth of hold is allowed to load three and a quarter inches cleared sides for every foot of depth of hold. These rules are applicable to all wooden ships. In speaking of the capacity of vessels to carry guano, I speak with reference to the Government rules and regulations of the Peruvian Government. A spruce ship will carry more than a spruce and pitch pine ship; but the difference is not very much; it depends upon the quantity of pitch pine in the ship. Pitch pine is a heavier wood than spruce. A tamarac ship will carry about as much as the ordinary spruce and pitch pine ship. I cannot tell what would be the difference between a spruce ship and a tamarac ship as to carrying. Something would depend upon the shape of the ship. The old tonnage of my ship was sixty or seventy tons more than her register tonnage. Q.—If the *Palm Tree* was a vessel of fourteen hundred and seventy-two tons register in new tonnage, and sixteen hundred and eight tons old tonnage, or carpenters' measurement, would she not be a good carrying vessel? [Objected to by Mr. Forbes.] Ans.—Yes; I think she would be. I am not prepared to say of the same tonnage at per centage of guano she would carry; it would be quite impossible for me to fix any figure.

A. KENNEY.

Robert Reed called, on the part of the defendants, and being sworn, says:—

I am a ship-owner in Saint John. I have been running ships for twenty odd years, and owning them over that period. *Q.*—Are you, from your experience as a ship-owner, acquainted with the guano trade? *Ans.*—My experience is confined to seeing guano-loaded vessels arrive in England and Antwerp. *Q.*—Are you able to state what quantity of guano a tamarac ship of fourteen hundred and seventy-two tons register tonnage and sixteen hundred and eight tons carpenters' measurement would carry? [Objected to by Mr. Forbes.] *Ans.*—It would depend upon the shape of the vessel. If this vessel was, as I expect she was, of the usual build of four or five years ago, and if she had a master of fair capacity and tact, she should carry twenty-two hundred tons of guano. We would be disappointed, if she were our vessel, and did not deliver twenty-two hundred tons. *Q.*—What would be her disbursements at Callao? [Objected to by Mr. Barker.] *Ans.*—It depends greatly upon the Captain. Ordinarily it would be for a vessel of her size, seven or eight hundred pounds. I have seen the *Sarawak*. I could not tell what her disbursements would be, so much would depend upon circumstances. Colonial vessels, intended for sale, are usually sold at Liverpool. *Q.*—If you had a vessel, colonial built, to sell, would you send her to the Liverpool or London market? [Objected to by Mr. Barker.] *Ans.*—If the object was solely for sale, I would send her to the Liverpool market. *Q.*—Did you ever know of a colonial vessel being sent to London for sale, except the *Palm Tree*? [Objected to by Mr. Barker.] *Ans.*—No; I have no recollection of any New Brunswick built ship ever having been sent to London for sale. The ordinary rate of exchange at Callao for good drafts is, as near as I can tell, as follows: gold is worth twenty per cent. premium.

Cross-examination.

The disbursement of ships at Callao depends very much upon the Captain. The expenses also vary from time to time. We have had ships obtain guano at Callao. I obtain my knowledge from our own ships. The *Mount Pleasant* was in the guano trade; the *Peter Maxwell* was also in that trade; so was the *John Duncan*. These three vessels were all owned by us, and were all in the guano trade. I obtain my experience from those three vessels and others that we have had in the guano trade. These three vessels differed materially in their carrying capacity in proportion to their tonnage. The *Mount Pleasant* carried a very much larger cargo in proportion to her tonnage than the other vessels did. This was on account of the peculiarity of her build. She was built about the same time the *Palm Tree* was built; the other vessel about ten years before. The carrying capacity of a vessel depends very much upon their model and the material of which they are built. A spruce ship is much more buoyant than a hachmatac ship. Some ships will carry about sixty per cent. more than their tonnage. A hachmatac vessel built about the time the *Palm Tree* was built, would carry about fifty per cent. more than her tonnage. I do not remember ever having seen the *Palm Tree*. I do not know how much per cent. of her tonnage the *Palm Tree* would carry. I know Captain Alfred Betts for the past forty

being sworn, years. I have known him as a sea captain nearly forty years. He is a man that has had considerable experience in ships and shipping matters. I have the utmost confidence in Captain Betts as a ship master and in business connected therewith. *Q.*—From your knowledge of Captain Betts, have you also every confidence in his honesty and integrity? [Objected to by Mr. King.] *Ans.*—Yes, I have. *Q.*—Would he, in your opinion, be in every respect a reliable man to send to a foreign port to look after a vessel that had got into a difficulty? [Objected to by Mr. King.] *Ans.*—If we had a vessel in a difficulty we would be glad to get Captain Betts to go and look after it. Captain Betts is not now in our employment; he has been, but not for the last twelve or fifteen years.

Re-examination.

I do not remember what the old tonnage of the *Mount Pleasant* was. Her new tonnage is fourteen hundred and ninety-three tons. The register tonnage of the *Peter Maxwell* is now thirteen hundred and forty-three tons; but before she had a third deck upon her her tonnage was ten hundred and fifty-six tons. When she was in the guano trade she had no third deck: she was a ship, and her old tonnage was considerable over her now. As a general thing, the register tonnage of a ship is a fair index of her capacity.

ROBERT REED.

Adjourned until the sixteenth inst., at three o'clock, P. M.

AUGUST 16th, 1871.

Met pursuant to adjournment. Present: Messrs. Forbes and Barker on the part of the plaintiffs, and the Attorney General on the part of the defendants. John Frederickson, being called by the Attorney General on the part of the defendants, and being duly sworn, says:—

I am a master ship builder, and have been such for the last twenty-six years. I have built vessels in the United States and ships in Halifax, Maitland, Nova Scotia, Dorchester, and Saint John. I know the *Palm Tree*, built by James Smith. She was built down here at the back shore, in Saint John, near Courtenay Bay, at the foot of Princess street. I was there from time to time when she was being built. I was there when the keel was laid, and I went there often to see her. My son was foreman at the work for some time, and he was young as acting as foreman, and I took a good deal of interest in her, and went there often. I considered her an excellent ship: she had a good frame, and was well built. I noticed her frame and the model of her particularly. My business leads me to notice the model of a ship when I go into a ship-yard, to see her sailing qualities and capability to do her work and stand up under her canvas. I judged her to be a large carrier. She reminded me of a ship I built for Mr. Smith some fourteen years ago called the *Princess of the Seas*, which ship was a large carrier. The *Palm Tree's* lines were round. *Q.*—How did she compare in respect of fullness of lines and carrying capacity with ships usually built at that time, namely, about 1855. [Objected to by Mr. Barker.] *Ans.*—I think she compared with ships built at that time; she was as full a ship as any built at that time. Ships built previously to this time were built a little sharper. I consider the *Palm Tree* a full ship in every particular. I judged her to be a large carrier. *Q.*—Do you remember a ship built by Mr. Reed about

this time called the *Mount Pleasant*, and at what time was she built? [Objected to by Mr. Forbes.] *Ans.*—Yes, I do: she was built about the same time the *Palm Tree* was built. I was on board the *Mount Pleasant* when she was building and after she was launched, and I noticed her as I do other ships that I see building. Mr. Smith's ship, the *Palm Tree*, was the fullest ship of the two, and she was a better carrier therefore than the *Mount Pleasant*. *Q.*—Did you notice anything in the *Palm Tree* that made her peculiarly a strong ship? [Mr. Barker here objects to all this as being irrelevant.] *Ans.*—She had bilge logs in her, a very unusual thing. I never saw them in a ship built in Saint John before, except one that I built for McMoran & Dunn. *Q.*—What do you suppose the bilge logs in the *Palm Tree* would cost? [Objected to by Mr. Barker.] *Ans.*—Between four hundred and fifty and five hundred pounds.

Cross-examination.

The *Palm Tree* was an expensively built ship. Her frame was an expensive frame, and all her materials. I was in the habit of being about Mr. Smith's shipyard when the *Palm Tree* was being built. I was not employed at her. I never got a cent out of her. I knew the place where the *Palm Tree* was built before they made a shipyard of it. There never was a shipyard there before. I fitted up at Courtenay Bay a shipyard and another at Dorchester. This shipyard of Mr. Smith's was fitted up as a permanent yard for building ships: it was well fitted up—well done—a strong job: there were wharves, booms, docks, blacksmith shop, moulding loft, and other things, fitted up as if a man was going to carry on ship building there for some time: it had a boiler for steaming plank—no engine. There were blacksmiths' tools there. No doubt it cost a good deal to fit up this yard. I don't think it cost two thousand pounds, but it cost a good deal of money—I cannot tell how much. Yards that I have fitted up did not require so many wharves built. I have never been a sea captain. My knowledge of ships is confined to my knowledge of building ships. I have been to sea, but not as a master or sailor. I have some knowledge of fitting out ships, but I could not now tell, if I saw a bill for outfits, whether it would be correct or not. Mr. Smith would know, no doubt; he has had a good deal of experience in fitting out ships. I fitted out one for McMoran & Dunn, and one for Mr. Ring. *Q.*—Then I suppose if a lot of outfits were imported for a vessel for Mr. Smith, and delivered to him, with the prices charged for them, he would, from his experience and knowledge of the business, be able to tell whether the prices charged were correct or not? [Objected to by the Attorney General.] *Ans.*—That is a question I think any one might answer if they saw the invoice, and then referred to other invoices, they could tell whether this one was correct or not. I know the *Palm Tree* was a good carrier from her model. I can tell what is the carrying capacity of a ship by the fulness of her lines. The *Palm Tree* was a hacmatac ship; the *Mount Pleasant* was a spruce ship. If a spruce ship and a hacmatac ship were of the same size and dimensions, the spruce ship would carry the most, for she is built of lighter material. She would carry considerably more, not twenty per cent. more, about ten per cent. more, perhaps not that much. A fourteen hundred ton spruce ship would carry about one hundred tons

as she built more than a hacmatac ship of the same size and model. It is about four years since I built a ship. The last ship I built was for Mr. S. J. King. That was about three years ago.

Re-examination.

The *Mount Pleasant* was not altogether a spruce ship. There was a good deal of pitch pine in her. She was also built of hacmatac, oak, and birch. Her planking was birch, spruce, and pitch pine. [Mr. Barker objects that this does not arise out of the cross-examination.] No doubt there are ships built in the country without pitch pine. Q.—Is there any difference between spruce ships as to their class or character? [Mr. Barker objects to the question.] Ans.—Certainly there is a difference in their classification. Some will get four, some five, and some six years, English Lloyd's. This difference of character arises from the material and workmanship likewise. Q.—Suppose the *Mount Pleasant* and the *Palm Tree* were of the same model, what would be the difference in their carrying capacity, so far as it would depend upon the difference in wood. [Objected to by Mr. Barker.] Ans.—From seventy-five to one hundred tons. The *Mount Pleasant* would carry the most; but not more than seventy-five tons more, as the *Mount Pleasant* had a great deal of hardwood in her. Q.—Now, then, I have asked you what would be the difference in their carrying capacity; supposing they were of the same model, but the *Palm Tree* being, as you say, of a better carrying model, what would be the difference in their carrying capacity, as the ships really were. [Objected to by Mr. Barker.] Ans.—The *Palm Tree* would carry the most, suppose their tonnage was the same in carpenter's tonnage.

JOHN FREDERICKSON.

Adjourned until Thursday, the seventeenth instant, at ten o'clock, A. M.

THURSDAY, the 17th August, 1871.

Met pursuant to adjournment. Present—The Attorney General and Mr. Morrison for defendants, and Mr. Barker and Mr. Forbes on the part of the plaintiffs.

Oliver Pittfield called on the part of the defendants, and being sworn, says:—

I am a member of the ship-building firm of Crookshank & Pittfield. I remember the ship *Palm Tree*, built by Mr. Smith. I worked on her as foreman. She had bilge logs in her. I saw some of the Messrs. Vaughan down there about her when she was being built. I saw Mr. David Vaughan there, and this gentleman here, Mr. James Robinson, who is a clerk of the Messrs. Vaughan. I also saw Mr. Henry Vaughan there. They were not doing anything there in particular. Mr. David Vaughan was there considerable. When I went there she was pretty well along, nearly caulked—about one half caulked. I went there about the middle of March, 1865. I was there when the bilge logs were put in. I superintended the work at that time. I saw some of the Messrs. Vaughan about there when the bilge logs were put in. Mr. David Vaughan was about there then, and Mr. Henry Vaughan was there too. Sometimes David Vaughan would come, and then Henry Vaughan would come with him. David Vaughan did give directions as to the fastening

of the bilge logs. He asked for some iron fastenings to be driven down athwart ship, every three feet apart, and they were driven accordingly. I did not hear him direct about anything else. The bilge logs were first driven through with copper from the outside. Mr. Vaughan also asked for up and down iron bolts to be driven through, besides the athwart-ship bolts; and the up and down iron bolts were also driven. These up and down iron bolts were driven because Mr. Vaughan did not think there was enough fastening without them. The fastening that Mr. Vaughan dictated was extra fastening. It is not usual to put bilge logs in vessels here: this was the only vessel I ever saw them in before, except one vessel in which I saw them, and I have never seen them in any vessel since the *Palm Tree*. The bilge logs in the *Palm Tree* were made of oak and hachmatac, and there were two tiers of them in the *Palm Tree*, and only one tier in the other vessel I have spoken of. The effect of the bilge logs was to add additional strength to the ship. She was a good ship. The cost of the bilge logs would, I think, be about four or five hundred pounds.

Cross-examination.

Mr. Vaughan was down about the vessel when I was there. I was there about three months. The vessel was launched in June. I think it was hired by Mr. Smith. Mr. Smith was there when Mr. Vaughan gave directions about the bilge logs. Mr. Vaughan did not give me the directions to put the bilge logs in, in the first instance. He gave the directions about the fastenings. Mr. Smith and Mr. Vaughan were consulting together as to the advisability of putting in extra fastenings, and Mr. Vaughan was of the opinion that it would be better to put in extra fastenings, and Mr. Smith, I suppose, thought so too, or else they would not have been put in. I acted whilst I was in the yard entirely under Mr. Smith's direction. Mr. Frederickson was there as foreman before me. During the three months I was there, there were other people there looking at the ship besides the Messrs Vaughan. I did not know who the Messrs. Vaughan's business there was.

Re-examination.

Question.—What appeared to be Mr. Vaughan's business there? [**Objected to by Mr. Forbes.**] **Ans.**—They were looking about the ship and how things were getting on. Mr. David Vaughan was very anxious about the launching the ship. I would not myself have put in the extra fastenings. When Mr. Smith and Mr. Vaughan were talking the matter over about the bilge logs, Mr. Smith said the fastening was equal to what Lloyd's required for fastening. Mr. Vaughan said he thought it would be better to have the extra fastenings put in, and they were put in.

OLIVER PITTFIELD.

The defendants' case is closed here.

The plaintiffs here proceed to call their witnesses and put in further evidence. [The Attorney General and Mr. Morrison here object to a further testimony on the part of the plaintiffs being received.]

Albert Betts is here called on the part of the plaintiffs, and he has sworn says: [Notice to produce, first put and marked by Barrister.]

I reside in Saint John. I know James Smith, the defendant, and I know the Messrs. Vaughan intimately, both these that are living, and

to be driven down new those who are dead. I am a master mariner, and have been such
 given accordingly between thirty and forty years. I have commanded vessels out 'in the
 ge logs were first nano trade once. I made one voyage for guano. I knew this vessel,
 r. Vaughan also the *Palm Tree*, that has been spoken of. I am the person spoken of by
 ough, besides the Mr. Smith as having gone down to Callao. I was employed by him in
 bolts were also November 1866. I went down to Callao at that time under the follow-
 driven because ing circumstances: I met Mr. Smith in D. & T. Vaughan's office, in
 ng without them Saint John, about the 20th of November, 1866. Mr. Thomas Vaughan,
 tening. It is ne r. James Smith and myself were present, and I think Mr. James Rob-
 nly vessel I ever son also. Mr. Robinson was a clerk in D. & T. Vaughan's office. I
 them, and I have as informed by Mr. Smith and Mr. Vaughan both, that the ship *Palm*
 The bilge logs ree had been laid on in her berth in Liverpool for freight and passen-
 ere were two tie ers to Melbourne by James Baines & Co., and that she had received on
 her vessel I had board a freight of some six thousand pounds, and after leaving Liver-
 ditional streng pool some six weeks the house of James Baines & Co. failed, and had,
 ilge logs would, before failing, collected nearly all the freight of the vessel, and that they
 d, by an agreement with Mr. Smith, agreed to fit the vessel out, to
 y her bills, and had never done so; consequently the parties that had
 plied the outfits intended to seize upon the ship when she returned
 ck from that voyage; that they had received a telegram from England
 at she had been bottomryed in Melbourne for some two thousand
 ounds, which was to be paid ten days after her arrival at Callao, and
 ey wished me to proceed to Callao and relieve the bottomry from the
 ip. I proceeded to Callao. Before I went to Callao it was talked
 er between the three of us as to the best means of relieving the bot-
 mry. It was suggested to take a second bottomry. The next day, in
 nversation with Mr. Smith, he told me that he had hard work to get
 e Messrs. Vaughan to advance means to send a person to Callao to
 ok after the business of the ship, but they had finally consented to ad-
 vance means to do so; and I was furnished with a bank credit in New
 ork for ten thousand dollars in gold by Messrs. D. & T. Vaughan, and
 o a power of attorney from Mr. Smith. [The power of attorney from
 mes Smith to Albert Betts, dated the twenty-first day of November,
 66, put in.] This is the power of attorney I received from Mr. Smith.
 Messrs. D. & T. Vaughan also furnished me money to pay my expenses
 Callao. They gave me in greenbacks one hundred and thirty-nine
 ollars, and in American gold three hundred dollars. They asked me
 hat amount I would charge for going down. I was either asked this
 y Mr. Smith or Mr. Vaughan, in Mr. Smith's presence. They were
 th standing together at the time. I told them my charge would be at
 e rate of two hundred pounds sterling per annum and my expenses.
 his was agreed to by Mr. Smith. This rate was to cover the time from
 hen I left here until I got back, or was done with the business of the
 ip. Q.—Did Mr. Smith know before you left Saint John of your
 aving been furnished by Messrs. D. & T. Vaughan with the bank
 edit? [Objected to by the Attorney General.] Ans.—Yes; he did
 ow of it; I know that he knew, because he was mostly present at the
 ansaction throughout. He also knew before I left Saint John that they
 d furnished me with money to pay my expenses. Q.—Was there any
 ng said by Mr. Smith before you left Saint John, or in his presence
 Mr. Vaughan, in reference to your drawing the freight at Callao to

take up the bottomry? [Objected to by the Attorney General.] *Ans.*—It was Mr. Smith's orders to me to try and secure the freight, if possible. *Q.*—Did he (Mr. Smith) give any reason why? [Objected to by the Attorney General.] *Q.*—The outfit bills had not been paid by James Baines & Co. before their failure, and the parties holding these claims against the ship would try and collect them on her arrival home. Mr. Vaughan said to me, in the presence of Mr. Smith, that he held a mortgage upon the ship, but that he had no control of the ship whatever; that Mr. Smith was the owner of the ship, and he wished me to understand that particularly. I proceeded on to Callao by the way of New York. I left here on the twenty-second of November, or twenty-third, I am not sure of which, 1866; I arrived in Callao on or about the twenty-first of December. The *Palm Tree* had arrived there. I saw the Captain—Captain Griffiths. I did not know him before: he was a stranger to me. *Q.*—What did Captain Griffiths tell you concerning the *Palm Tree*? [The Attorney General objects to this witness stating any conversations had with Captain Griffiths. and this objection, it is understood, shall extend to all questions asked this witness as to conversations with Captain Griffiths.] *Ans.*—Captain Griffiths was Captain of the *Palm Tree* at that time, and he stated a claim had been made upon him by the house of Anthony Gibbs & Sons, of Lima, for a bottomry given by him upon the *Palm Tree*, at Melbourne, and which was due in three days from that time. I proceeded to Lima, and called upon the managing partner of Anthony Gibbs & Sons. He showed me a bottomry. [The Attorney General objects to this.] I wish to state here that the house was "William Gibbs & Co.," instead of "Anthony Gibbs & Sons." The managing partner was Henry. Captain Griffiths acknowledged the bottomry. Mr. Henry produced this paper to me. [The paper here is put in. The Attorney General objects to the paper going in, and it is withdrawn.] *Q.*—What did you do with the paper when you got it from Mr. Henry? *Ans.*—I kept it. I paid William Gibbs & Co. eighteen thousand four hundred and nineteen dollars and forty-three cents Peruvian dollar. This amounted in sterling to two thousand eight hundred and one pound seven shillings and elevenpence, being the Peruvian dollar at thirty-pence halfpenny. I did not show this paper to the Captain. After I got it Captain Griffiths told me he had seen the bottomry bond at Gibbs' before I arrived there. That was the same place where I got this document, and paid the money. Captain Griffiths' christian name was William. After I got this paper, which was handed me when I paid the money, I got Mr. Henry to go with me before the British Consul General at Peru. He there transferred. [The Attorney General objects.] The writing at the bottom of the paper was put on at the Consul General's office. The signature, James Henry, is in the hand-writing of the James Henry spoken of; and the signature, John Barton, is the signature of the Consul General at Peru. The seal there was also put on at the Consul's office. [The paper is here put in, subject to the Attorney General objecting to the same being put in.] *Q.*—Tell me how and when you got the money to pay this bottomry off? [The Attorney General objects to the question.] *Ans.*—Captain Griffiths drew the money from the guano company's office, and placed it in the hands of John Barton & Co., to my credit in Callao. He drew the first time thirty-five hundred

[The Attorney General.] *Ans.*—I paid off the bottomry with that money, and the balance was to my credit. I conversed with Captain Griffiths as to the vessel's voyage out to Melbourne, and the circumstances under which he gave the bottomry bond; and he said he had rolled the head of his topmast away, off the foremast of Good Hope, which had caused considerable damage to his sails, and spars, and rigging, and his disbursements were swelled very high by the misconduct of some of his officers on the voyage to Melbourne. The authorities had prosecuted some three or four of them, and the whole of the expenses had come upon the ship. He said the officers of the ship were all implicated. He said to me what his disbursements at Melbourne were, and showed me at Callao the accounts of them. These accounts were not delivered to me; they were detained by him. I saw some disbursement accounts concerning the *Palm Tree* in Mr. Smith's hands in London. I think they were some of the same I saw at Callao, but I am not sure. The Captain took the ship out to the Islands to load, and she did load with guano. I was on board her while she was loading, and conversed with Captain Griffiths in reference to the loading, and in reference to her cargo. I wished him to take a good load, and he promised to do so. I left the ship at the Islands, before she was loaded, and went back to Callao. On the ship's arrival at Callao, from the Islands, the Captain informed me that the ship was four inches deeper than the Government mark. I did not see the mark myself. I got her away from Callao as quickly as I could. *Q.*—Do you know anything about the Government regulations at Callao about loading vessels with guano? [The Attorney General.] *Ans.*—Yes; it is according to the English Lloyd's rule—three and one quarter inches to the depth of hold on a dry side in ships twenty-two feet hold, and three and a half inches on the foot of hold for a ship of twenty-four feet hold. The Government surveyors mark the sides with a piece of copper, according to that rule; and they are allowed to load to that mark; and Griffiths told me he had loaded so as to put that mark four inches under the water. She cleared from Callao, with Captain Griffiths as master—the same Captain Griffiths for Cork, for orders. I paid the ship's disbursements at Callao outwards; they amounted to (the general disbursements) four thousand eight hundred, and eighty-two dollars and eighteen cents (Peruvian dollars). The Captain bought off thirty of his lay days at thirty-eight dollars per day, amounting to eleven hundred and forty dollars of the Peruvian currency. By this he got off so many days sooner. Her disbursements that I paid there amounted to about eight hundred pounds sterling; that money I paid after he came down from the Islands. The captain drew one thousand pounds more. This one thousand pounds and the thirty-five hundred pounds that I have spoken of, was all drawn against the guano bond. I sent Mr. Smith a statement. I had, whilst I was out there, several letters from Mr. Smith. I took the other bottomry bond that is evidence, at Callao. Captain Griffiths told me at Callao that he had sold at Melbourne all his spare provisions; he did not say how much. The ship *Sarawak* was at Callao when the *Palm Tree* was there. She was loading with guano also at the same time. The Captains, at my suggestions, after the *Palm Tree* was loaded, swapped their boats, the *Palm Tree's* boat had been used in loading the *Palm Tree* with guano,

but the *Sarawak's* boat had not been used in loading guano, and was a new. The *Palm Tree's* boat was a guano boat; the *Sarawak's* boat was not; but the *Sarawak's* boat could be used in loading guano if one should choose. The boats were about of the same value; the boats were both built at Liverpool, I believe, and would cost between twenty and thirty shillings a foot over all. They were both copper fastened, and, so far as I know, about the same length. I do not know why the exchange was made; there was nothing gained or lost one way or the other. The *Palm Tree's* boat was not sold, so far as I know. The *Euridice* was sold at Callao at the same time; she belongs to the Messrs. Vaughan also. After paying the *Palm Tree's* disbursements, I had a balance in my hands of two thousand four hundred and seventy-six dollars and twenty-nine cents Peruvian currency. I had a large disbursement bill to pay off for the *Sarawak* on account of Messrs. Vaughan, and I gave Mr. Smith credit for that amount; that would amount to, in New Brunswick currency, about six hundred and thirty pounds sterling. I had a conversation with Mr. Smith before he left Saint John with reference to Messrs. Vaughan's ships. This conversation was—he told me to do everything that I could that came in my way to expedite them. I returned from Callao direct to Saint John by the way of New York. I arrived here in the end of April 1867. My expenses whilst I was away amounted to about seven hundred dollars in New Brunswick currency.

Adjourned until the eighteenth of August, at half-past 7 o'clock, p.m.

AUGUST 18th, 1871.

Met pursuant to adjournment. Mr. Barker and Mr. Forbes, on the part of the plaintiffs, and the Attorney General and Mr. Morrison on the part of the defendants, are present.

Examination of Albert Betts resumed.

I was paid for the time I was away, at the rate mentioned, by D. & Messrs. Vaughan. They settled my accounts on my return. The *Palm Tree* left Callao for England March the eighth, 1867. It took me thirty days to go down to Callao from here. I think that is about the usual time it takes to go. I received several letters from Mr. Smith whilst I was at Callao. This letter is one of them. [The letter is put in—was proved on the cross-examination of Mr. Smith, and marked W. The letter is dated December 5th, 1866. This is another of the letters I received from Mr. Smith whilst at Callao. [The letter is put in, and is one of the letters proved on the cross-examination of Mr. Smith, and is dated the 10th day of December, 1866, and is marked M1.] This is another of the letters I received from Mr. Smith whilst at Callao. [The letter is put in: it is marked L1, and dated February 9th, 1867, and was produced on the cross-examination of Mr. Smith. [Mr. Barker here called upon the defendants to produce a letter of Captain Betts to Mr. Smith, and dated 9th day of January, 1867. The letter is produced and put in.] This is a letter received by me from Mr. Smith. I received it at Liverpool or London: the letter is marked K1, and was proved on the cross-examination of Mr. Smith; the letter is dated the first day of July, 1867. [The letter is put in.] This is another letter received by me and any

guano, and was from Mr. Smith; it is dated 24th of August, 1867, and marked H1, and *Sarawak's* boat as proved on the cross-examination of Mr. Smith. [Mr. Barker calls, ing guano if on der the notice to produce, for all letters written by Captain Betts to ; the boats were Mr. Smith from Callao. The Attorney General objects. A number of een twenty letters are produced by the Attorney General, and put in by Mr. Barker, fastened, and, as follows: one dated December 20th, 1867, from Captain Betts to Mr. why the exchange Smith; another dated February 21, 1867, from Captain Betts to Mr. the other. The Smith; another dated March 15th, 1867, from Captain Betts to Mr. *Euridice* was a Smith.] I am not certain whether I wrote any more letters than those ughan also. Ar et in from Callao to Mr. Smith. I came home from Callao, and after- nce in my hand ards went to England. I was in London when the *Palm Tree* arrived and twenty-nine London from Callao. Mr. Smith came there, I think, the day after she ill to pay off f rived, I think in the morning. Captain Griffiths was then master of the e Mr. Smith ere *Palm Tree*. I saw Mr. Smith soon after his arrival in London. Mr. Henry nswick currency ughan, I think, was there at the time. Mr. Smith and myself, I think, about six dollars ent down to the Victoria dock, where the ship lay. We found Captain Smith before Griffiths on board. Captain Griffiths, Mr. Smith and myself returned to ships. This con London. We went to the office of Lloyd, Low & Co., and the Captain uld that came ere presented his papers for entry. The ship was—[The witness is here et to Saint Joh pped by objection. The witness is allowed to resume, subject to the April 1867. Me cjection of the Attorney General.] The ship was entered by Lloyd, andred dollars w & Co., with Mr. Smith's full consent. Q.—How came you to go to Lloyd, Low & Co's office? [Objected to by the Attorney General.] st 7 o'clock, p. s.—Most all guano charters make provision.—[The Attorney General objects to witness stating what charters contain without producing them.] st 18th, 1871. enter through Lloyd, Low & Co. I mean guano charters. Lloyd, w & Co. were the agents of Grierson, Cole & Co. for the purpose of ering guano ships. This was about the 19th day of July, 1867. This k place on a Saturday. [The Attorney General objects to Captain etts stating anything he did in London concerning the ship, unless Mr. Smith was present. This objection is made in consequence of the wit- s going on to say, on Monday I visited the ship at Victoria docks.] The *Palm Tree* visited the ship on Monday at the Victoria docks, and found that she k me thirty day been arrested by the Court of Admiralty—[the Attorney General the usual time ects]—for bills for a large amount that had been contracted in Liver- whilst I was ol before she sailed from there. Q.—How did you know the ship was in—was prove ested? [Objected to.] Ans.—I saw the bills upon her mainmast— in—was prove ean writs—and I saw the Admiralty bailiff on board of her, or a man etters I receive t said he was. I am not sure, but I think Mr. Smith was with me n, and is one of this occasion. Smith then employed a proctor, by the name of Wills, ith, and is date defend the suit. I do not know Wills' christian name. I was several his is another es at Mr. Wills' office with Mr. Smith. I went to Liverpool. Mr. [The letter omas Vaughan. [The Attorney General objects to the witness going 7, and was pre to speak of conversations with Thomas Vaughan.] Mr. Thomas arker here call ughan said Mr. Smith would want me in England, and I consented ts to Mr. Smith go. I was supplied with money to meet my expenses by D. & T. oduced and pa ughan to the amount of one hundred and twenty dollars. Q.—Did I received it a ever pay the proctor, Wills, any money on account of the suit? s proved on the pected to.] Ans.—I did. I paid him ten pounds. I am not certain first day of July t Mr. Smith was with me at the time. Q.—Did you receive in Eng- received by m d any part of that guano freight? Ans.—No. Q.—Did you in any

way act on the bottomry bond to yourself in England? [Objected to.] *Ans.*—Yes, I did. I gave a release for two thousand pounds on the freight. [It is understood between all the counsel that all objections to questions, in every instance, goes to the answer, as will suppose the answer objectionable.] *Q.*—To whom did you deliver this release? [Objected to.] or the paper which you call the release? [Objected to.]

Ans.—To Mr. Low, of the firm of Lloyd, Low & Co., in London. I do not know of that release ever being in this country. *Q.*—For what purpose did you give this release or paper for two thousand pounds? *Ans.*—For the purpose [question and answer objected to] of paying off the crew and the ship's inward disbursements at London. *Q.*—Do you know from your own knowledge, or from conversations with Mr. Smith, know whether this amount of two thousand pounds was used for this purpose of paying off the crew and disbursements? [Objected to.] *Ans.*—I do not know this from conversations with Mr. Smith; but I do from conversations with Captain Griffiths and Lloyd, Low & Co.—[The Attorney General objects to any conversations between witness and Captain Griffiths, or between witness and Lloyd, Low & Co. being put in evidence. know that the crew were paid off, and the inward disbursements at London were paid by Lloyd, Low & Co.]

Adjourned until the nineteenth day of August, 1871, at half-past seven o'clock.

AUGUST 19th, 1871.

Met pursuant to adjournment. Present: Mr. Forbes and Mr. Barker for the plaintiffs. The Attorney General and Mr. Morrison for the defendants.

Examination of Albert Betts resumed.

The ten pounds that I paid Mr. Wills, the proctor, I did not get from Mr. Smith. It was paid me by Mr. Vaughan. The money was drawn from Mr. Vaughan in the first instance. I remained in England at the time until about the twenty-seventh of August, 1867, when I left for Cork. I arrived in England about the twenty-eighth day of June, 1867.

Q.—Whilst you were in England, and after the arrival of the *Palm Tree* from Callao, were you or were you not engaged in the business of the *Palm Tree*? [Objected to by the Attorney General as too leading.]

Ans.—I was. *Q.*—On what business and for what purpose did you go to England at the time spoken of? *Ans.*—The business of the *Palm Tree*. From the time I left here, and whilst I was in England, and up to the time I left for Cork, my expenses were paid to the amount of four pounds by Mr. Vaughan and Munn, Miller & Co.; and besides this received ten pounds from Lloyd, Low & Co. This ten pounds was private matter; they lent me the money and I returned it to them. Munn, Miller & Co. were a firm doing business at that time in Liverpool. *Q.*—Did you at any time deceive or make any misstatement to Mr. Smith as to what you did concerning the *Palm Tree* at Callao? *Ans.*—Not to my knowledge. Mr. Smith has not personally paid me any money on account of my expenses to Callao or to England.

Cross-examination by the Attorney General.

I came to be at Messrs. Vaughan's office at the time I have stated.

[Objected to. pounds on the all objections to suppose the an release? [Ob Objected to. London. I do —For what pur pounds? *Ans.*— f paying off the . *Q.*—Do you Mr. Smith, know for this purpose to.] *Ans.*—I do I do from conver —[The Attorney and Captain Grien put in evidence. disbursements a at half-past seven

UST 19th, 1871. s and Mr. Barker Morrison for the

I did not get from money was drawn in England at the 7, when I left for day of June, 186 of the *Palm Tree* the business of the l as too leading purpose did you gness of the *Palm Tree* England, and the amount of for and besides this ten pounds was rned it to them at time in Live y misstatement *Tree* at Callao personally paid n England.

e I have stated.

rat went there under these circumstances: Mr. Robinson came for me; mean Mr. Robinson, Mr. Vaughan's clerk. It either occurred then or the next day with Mr. Smith himself that I understood the *Palm Tree* had been chartered by Baines. Mr. Smith, before I left for Callao, told me that there would be money due on the charter party at Callao, and that, with the money from the sale of provisions, would go far towards clearing off the bottomry. I do not know that at that time the terms of the guano charter were not known by Mr. Smith. I forget whether or not there was anything said in that conversation by Mr. Smith, or in my presence, as to the amount due upon that charter party at Callao. At the time I left to go to Callao, knew the amount: it was either twelve or fourteen hundred pounds. I cannot say which of the amounts it was. I took no memorandum of it. There was no occasion for it. *Q.*—If you knew that, why did you get a bank credit for ten thousand dollars. *Ans.*—There was nothing like having plenty of funds, and at that time the amount of the bottomry was not known. *Q.*—Then in these conversations there was nothing said about the bottomry? *Ans.*—Yes there was. *Q.*—How could anything be said about the amount of the bottomry if nothing was known about the amount of it? *Ans.*—Yes, because it was supposed to be about two thousand pounds. *Q.*—Then it must have been stated there that it was about two thousand pounds? *Ans.*—Yes, it was; and I think also it was then said it was to be paid ten days after the arrival of the vessel. *Q.*—Did you not go to Callao well for Mr. Vaughan as for Mr. Smith? *Ans.*—Mr. Smith directed me to do all I could for Messrs. Vaughan's interest. *Q.*—Did not Messrs. Vaughan's also direct about the ship—to look after their interest? *Ans.*—Nothing more than this, that I should look after their ships if it came in my way. *Q.*—What ships were those? *Ans.*—The *Prudence*, the *Sarawak*, and the *John Parker*. *Q.*—Where were those ships then? *Ans.*—All those ships were at Callao or the Chincha Islands whilst I was there; one arrived there before I reached Callao, and the other two arrived there after I got there. *Q.*—I suppose you knew before you left here that those ships were becoming due at Callao? *Ans.*—Yes, I do; some of them, if not all. *Q.*—How did you come to know this? *Ans.*—In conversations with Thomas Vaughan. *Q.*—Did you not get a paper from Messrs. Vaughan before you left Saint John Callao? *Ans.*—Yes, I got a power of attorney from them. I have not got that power of attorney now. I gave it to Messrs. Vaughan because I had no further use for it. I got a power of attorney from Mr. Smith too. I did not give it up to him. I forget who I gave that power of attorney to, but I think I gave it to the Messrs. Vaughan. Yes, I know I gave it to the Messrs. Vaughan. I cannot say why I gave it to Messrs. Vaughan. It was as safe in their hands as in mine. I forget when or where I gave it to them. The reason I did not give it up to Mr. Smith was that he never asked me for it. The Messrs. Vaughan never asked me for their power of attorney. I will not say the simple reason why I did not give the power of attorney to Mr. Smith was because he did not ask me for it. *Q.*—What other reason was there. *Ans.*—The ship was in great difficulty, and it was well to hold all the papers connected with her. *Q.*—To what do you refer when you use the expression, all the papers connected with her? *Ans.*—All that are present

in the Court. *Q.*—Did you have all the papers that are present in the Court? *Ans.*—Not all. I had not these Mr. Smith has. *Q.*—What papers did you have, and did you want to hold on to? *Ans.*—I had power of attorney from Mr. Smith, the two bottomry bonds, and a number of letters from Mr. Smith, and the accounts of the ship *Palm Tree*. *Q.*—Where did you get these accounts? *Ans.*—At Callao. I had in my possession the bottomry bond that was put in evidence here the other night. I have not those accounts in my possession now. Whatever accounts there were in connection with the ship I gave into D. & Vaughan's office. I gave the bottomry bond that was put in evidence the other night to Mr. Vaughan in London. Whilst I was in England in 1867, during the time I have spoken of, I gave the other bottomry bond to Mr. Vaughan. This last bottomry bond that I am speaking of is the one that I took myself. Mr. Smith asked me for that bottomry bond in London, after I had given it to Mr. Vaughan. I do not recollect the date at which I gave it to Mr. Vaughan. It was just before I left London for Liverpool, but not shortly before I left England. I gave the bottomry bond to Mr. Vaughan about the twentieth of August. I arrive at this date because I left Liverpool for Cork before the twentieth of August. Mr. Smith asked me for it I think the next day after I had given it to Mr. Vaughan. I gave Mr. Vaughan both bottomrys at once. I was employed by Mr. Smith to go to Callao. I acted in Callao as his agent in reference to the *Palm Tree*. The money that was paid to William Gibbs & Co. for the first bottomry, was not my own money; it was advance freight of the ship *Palm Tree* on her voyage from Callao to the United Kingdom. I consider my time and my expenses as a charge against Mr. Smith as owner of the *Palm Tree*. What I did at Callao for the *Palm Tree* I did for Mr. Smith. *Q.*—Then why did you not give both bottomrys up to Mr. Smith? *Ans.*—I held them as a receipt for my transactions in Callao. *Q.*—How would they a receipt? *Ans.*—They showed the transactions. *Q.*—If you considered it a receipt, why did you give the bonds to Mr. Vaughan? *Ans.*—I considered them as safe in his hands as in my own. When Mr. Smith asked me for the bottomry, I told him I had given it to Mr. Vaughan. Mr. Smith, when I told him this, did not say much. I forgot what he said. *Q.*—Had not Mr. Smith before that repeatedly asked you for the bond? *Ans.*—I do not recollect that he did. I will swear that he never asked me before—never once before. *Q.*—If you are now positive that Mr. Smith never once asked you for the bond, why did you swear a moment ago that you did not recollect whether Mr. Smith before that had repeatedly asked for the Bond? *Ans.*—Because I am now positive he did not ask me. *Q.*—Did not you and Mr. Smith go to the Strang's? *Ans.*—Yes; it was before that. I do not recollect that Mr. Smith then asked me for the bottomry. *Q.*—You will not swear positively that he did not. *Ans.*—I do not recollect.

Adjourned until Monday evening, at half-past seven o'clock, the 2nd day of August instant.

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Met pursuant to adjournment, on 21st August, 1871. Present as before.
Cross-examination of Captain Betts resumed.

Q.—What was said about your going to Callao as to your expenses?

Ans.—I was to have at the rate of two hundred pounds sterling per year and my expenses. My expenses there were about eight hundred dollars. The items are as follows: Expenses to Boston, seven dollars and fifty cents; I paid for meals on board two dollars and fifty cents; passage and expenses to New York, seven dollars; cab hire, one dollar and fifty cents; hotel at New York, sixteen dollars and fifty cents; passage to Aspinwall, one hundred and twenty-five dollars; luggage and cab hire, one dollar and fifty cents; Aspinwall hotel, four dollars; Panama railway, twenty-five dollars; Panama hotel, nine dollars; passage from Panama to Callao, one hundred and sixty dollars; steward's fee, two dollars and fifty cents; feeding a boat, and dinner and tea, two dollars; expenses at Lima, two dollars; boat hire, one dollar and fifty cents; breakfast, dinner, and tea, two dollars and fifty cents; hotel bill at Callao, eighteen dollars; passage to Chincha Islands, by the steamer, twelve dollars; boat hire at Callao and Chinchas, two dollars; expenses at Chincha Islands, twelve dollars and fifty cents; passage back to Callao, twelve dollars; lodgings at the Verandah hotel, eighty-eight dollars; passage to Chincha Islands, twelve dollars and fifty cents; conveyors of *Palm Tree*, fifty-two dollars; Verandah hotel, seventeen dollars and fifty cents; board at restaurant, thirty-four dollars; passage to Chincha Islands, twelve dollars and fifty cents; boat for baggage, one dollar and fifty cents; board on board of *Queen of Nations*, eighteen dollars and seventy-five cents; water bill of *Palm Tree*, twenty-seven dollars; railway expenses to Lima, twelve dollars; board at Chincha Islands, seven dollars; seven days board at Callao, twenty-one dollars; passage from Chincha Islands, twelve dollars; passage from Callao to Panama, one hundred and five dollars; Panama railway to Aspinwall, twenty-five dollars; expenses at Panama and Aspinwall, thirty dollars; passage to New York, seventy-five dollars; expenses at New York and Boston, ten dollars; passage from New York to Saint John, thirteen dollars and fifty cents. These expenses were all reasonable. I travelled in first class. I left Callao to come here about the twenty-fifth day of April, A. D. 1867, and arrived here twenty-fifth day of May following. Boats came from Callao to Panama once a fortnight. The *Palm Tree* sailed from Callao March the eighth, A. D. 1867, for England. I remained in Callao seven weeks after the *Palm Tree* sailed. I, during that time, was principally engaged looking after Mr. Vaughan's ships. The *Sarawak* sailed about the same time the *Palm Tree* did. The *Eurydice* sailed the twenty-sixth of April, and the day before I left. I left there before the *John Parker* sailed. I left her there. The sizes of these ships are as follows: the *Sarawak* between ten and eleven hundred tons; the *Eurydice* twelve hundred and forty-seven tons; the *John Parker* three hundred tons. I was a good deal around about these vessels when they were at Callao. I was on board the *Palm Tree* three times. I was on board of her from fifteen minutes to two hours each time; when business required me I went on board: I cannot tell how often I was on board the *Sarawak*, but I was on board her more times than I was on board the *Palm Tree*. I was on board the *Eurydice*. I stopped

on board her; the Captain requested me to stop on board her; the Captain of the *Palm Tree* did not. I stopped, too, on board the *John Parker* part of the time. I always made myself at home on board Mr. Vaughan's ships, because I was welcome. Those ships were also loading guano. I gave to the *Palm Tree* all the attention that was requisite. I mean when I say requisite, in a business way. I saw her when she was loaded at Callao, but I was not on board of her. I was on board of the *Sarawak* at the time the *Palm Tree* was lying there, and at the time the *Sarawak* was near the *Palm Tree*. The captain of the *Palm Tree* said she was loaded four inches over the mark, and the surveyor said so too, and I paid the surveyor fifty-two dollars for allowing her to load. By the Peruvian guano regulations the dry sides are measured from the underneath side of the main deck. *Q.*—State all that occurred about drawing the money on the guano freight? *Ans.*—Capt. Griffiths himself drew the money and gave his receipt for it. The reason he drew the money was he had a perfect right to do it, so far as I know. He drew it to meet the bottomry from Melbourne. I told him I came down there to see about it, and showed him the power of attorney from Mr. Smith. Captain Griffiths drew the money with my full consent; but he and I calculated the amount of money to draw to lift the bottomry. I knew the amount of the bottomry when I got down there, and the amount of the interest. The reason I did not use the bank credit was that there was no necessity to do so when I had Mr. Smith's own money. When I left Saint John none of us knew I could have Mr. Smith's money. I went provided. There was no knowing when I left how much was fixed. I went to try and get it. The freight could only be drawn in Captain Griffiths' name. I drew, or the captain did, first, the sum of thirty-five hundred pounds sterling, and one thousand pounds were drawn afterwards. I showed Captain Griffiths the power of attorney from Mr. Smith, and he recognized my authority. There was no secret about my having the bank credit for ten thousand dollars, and I presume Captain Griffiths knew it. The first sum drawn was thirty-five hundred pounds, and I told Captain Griffiths to draw it; and when the one thousand pounds were drawn, I told Captain Griffiths to draw that amount. When this four thousand five hundred pounds I paid the ship's disbursements throughout, bottomry and all. I drew the one thousand pounds when the ship came back from the Chinchas to pay her disbursements. She was about sailing then. I knew her disbursements pretty well at that time I drew. *Q.*—Then, Captain Betts, why did you draw more than you wanted? *Ans.*—I had been sent there for that purpose. *Q.*—If you been sent to pay the disbursements of Mr. Vaughan's ships with the money of Mr. Smith's, at that rate of exchange? *Ans.*—I do not know that I was, nor neither do I know that I did so. *Q.*—Did you not know that you, with that money, paid off the *Sarawak's* disbursements to the extent of twenty-four hundred dollars and upwards? *Ans.*—Yes; I paid to the amount of two thousand four hundred and seventy-six dollars and twenty-nine and one-half cents (Peruvian currency). This was the balance of the *Palm Tree's* money in my hands. *Q.*—As you say you knew the amount required to pay the *Palm Tree's* disbursements, why did you draw upwards of twenty-four hundred dollars of the *Palm Tree's* freight more than you required to meet her disbursements? *Ans.*—Because

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thought it was to Mr. Smith's interest to do so, and I would have
 awn more if I could. The first bottomry was paid off at thirty-six
 nce half-penny to the Peruvian dollar. Q.—Why was it that in the
 nsaction at the same time in drawing against freight, you allowed
 ty-three pence sterling to the Peruvian dollar? Ans.—Mr. Vaughan's
 n ship, the *Sarawak*, had paid forty-three pence on twelve thousand
 lars to the Spanish Guano Company on her homeward freight. She
 s re-coppered and docked in Callao, and her expenses were very heavy.
 r copper was worn out. It's an unusual thing to copper abroad on a
 eign voyage from England, but it has to be done sometimes. She was
 eoppered and re-caulked. The *Sarawak's* disbursements at Callao
 re seventeen thousand eight hundred and six dollars and seventy-two
 ts (Peruvian currency). The *Sarawak* was out of dock and at the
 ounds loading when I got down there. The *Sarawak* was in a greater
 tenly not to have gotten into a scrape than the *Palm Tree* was.
 t. Barker objects to going into the *Sarawak's* disbursements, or what
 did at Callao, as entirely irrelevant.] I do not remember when I
 for Callao. I knew that the *Sarawak* was there. I think it was not
 wn when I left here that she would copper there. I did not know it.
 on't recollect if the Messrs. Vaughan told me so before I left. They
 ht have done so, but I don't recollect. I do not think it would be
 robable that the captain would re-copper her there without orders
 n Messrs. Vaughan, if surveyors ordered it; and he could not load
 without—he would have to do it. Q.—Did not the power of attorney
 have referred to from Messrs. Vaughan, refer to it? [Objected to,
 withdrawn.] Q.—Why was it, in paying off the first bottomry, you
 allowed thirty-six pence half-penny to the dollar? Ans.—That was
 correct rate of exchange on England at that time, and not a maritime
 Q.—How was it then at the same time in drawing against freight,
 you allowed forty-three pence to the Peruvian dollar? Ans.—It
 a maritime risk, and could not be got at a less rate. Q.—What do
 mean by saying it was a maritime risk? Ans.—It was subject to all
 of risks. If the guano had washed out of the ship by a hole in her
 om, or any way, the Peruvian Government would have lost their
 ey. That was the lowest the Peruvian Government would pay the
 ey, for its usual rate is about thirty-eight—it varies according to cir-
 stances. If I had drawn on New York I cannot tell what the differ-
 would have been. I used the bank credit I took on New York on
 Vaughan's vessels, and drew on England for more. I had other
 York credits. Q.—Did you draw when in Callao upon England
 any further sums with which to pay the accounts of Mr. Vaughan's
 els there? [Mr. Barker objects that this will be going into the con-
 s of a written paper without producing it; second, that it is wholly
 evant, and has no possible connection with any allegations of the de-
 ant, Smith's answer, or the subject matter of this suit.] Ans.—I
 Q.—Then you substantially transacted the business of Mr.
 ghan's ships there while you were down there? Ans.—Not all.
 What did you do, and what did you not do? Ans.—I paid the dis-
 ements, and drew on England. Q.—How much did you pay there
 count of Mr. Vaughan's ships? [Objected to by Mr. Barker.] Ans.—
 d for them and the *Palm Tree* together in all the sum of forty-seven

thousand three hundred and forty-six dollars; out of this the disbursements of the *Palm Tree* amounted to the sum of forty-five hundred pounds less twenty-four hundred Peruvian dollars. Q.—Then this being so, was not your business at Callao as much for Mr. Vaughan's vessels as for the *Palm Tree*? Ans.—No; if it had not been for the difficulty of Mr. Smith's ship, I would not have gone there. Q.—How would those vessels have gotten on without the money you took on there? Ans.—In the usual way of other guano ships? Q.—Did you pay all the disbursement bills of the *Palm Tree*? Ans.—So far as I know I did. I brought the bills back, and delivered them at Mr. Vaughan's office. I have a memorandum of those bills in my book. Mr. Brice paid them, and I paid Mr. Brice, and I copied the items from the bills as they came into John Brice & Co.'s office. I paid Mr. Brice in the usual way—but I paid a draft whenever he wanted it. I examined the bills before I paid the money, and found them correct.

Adjourned until the 22d August, at two o'clock, p. m.

August 22d, 1871. Met pursuant to adjournment. Present as before.
Adjourned until the 28th instant, at half-past seven o'clock.

AUGUST 28th, 1871.

Met pursuant to adjournment. Present: Mr. Barker on the part of the plaintiffs, and Mr. Morrison on the part of the defendants.

Cross-examination of Albert Betts resumed.

I returned home from Callao on the 28th day of April, A. D. 1866. I paid off the first bottomry bond on or about the nineteenth day of December, 1866. The reason I did not return home as soon as I had paid off the bottomry bond was that I could not leave until the *Palm Tree* left. Q.—When, in answer to my question put to you a moment ago, you said that the reason why you did not return after paying the bottomry bond was that you had to look after Mr. Vaughan's ships, was that or was it not a mistake? Ans.—It was a mistake. Q.—Then why did you say it? Ans.—Because I remained there after the *Palm Tree* left at Mr. Smith's own orders. Q.—Verbal or written orders? Ans.—Verbal orders. Mr. Smith gave me a written power of attorney. Q.—Was there anything in the power of attorney given you by Mr. Smith that directed you to look after Mr. Vaughan's ships? [Objected to.] Ans.—No, nothing that I know of; it was not at all extraordinary that there was nothing in the power of attorney about looking after Mr. Vaughan's ships. I am quite certain I am not confounding Mr. Vaughan's instructions with Mr. Smith's. Mr. Smith told me several times to look after Mr. Vaughan's business. He did not tell me to superintend the coppering the *Sarawak*; neither did I do so. He did not tell me to superintend the disbursing the *Sarawak* or the *Eurydice*. He gave me permission to do so. Q.—When and in what manner did he give you permission to look after the disbursing the *Sarawak* and the *Eurydice*? Ans.—His permission was generally for me to look after Mr. Vaughan's business if it came in my way, and was so given me before I left here for Callao. There was nothing said about disbursement. The permission was generally to look after Mr. Vaughan's business.

is the disbursement of the hundred pounds?—Inasmuch as Captain Griffiths could and did draw the freight of the *Palm Tree*, what necessity was there for you going there at all?—This being so, was not Mr. Smith sent me. He must judge of the necessity. Q.—Do you not know that you went to Callao as much in the interests of the Messrs. Vaughan as in that of Mr. Smith? [Objected to.] Ans.—I believe if I had not gone there Mr. Vaughan would have lost five or six thousand pounds by the *Palm Tree*. Q.—Irrespective of the *Palm Tree*, did you not go to Callao in the interest of the Messrs. Vaughan?—Yes. I was on board the *Palm Tree* while I was there some three or four times. She, when I was on board her, was in the South Pacific Ocean. I was not on board her at Callao. I was on board her the Chincha Islands some three or four times; she was not loaded the first time I was on board her at the Islands; she was, perhaps, half loaded. I paid the surveyors fifty-two dollars in gold, and I paid that money without knowing she was loaded. The captain could have loaded her a great deal deeper if he had seen fit; that would have been sixteen inches below the water mark allowed by the Government. It is not usual for vessels in the guano trade to load sixteen inches below the Government mark. I have known some so loaded. I did so with the *Oceanica*. I loaded her sixteen inches below the Government mark. I paid eighty-five dollars for the privilege of so loading the *Oceanica*, but there was a water bill in that. It was in December, A. D., 1865. This cargo in the *Oceanica* was the only cargo I brought from Callao myself. The *Oceanica* was of the burden of between sixteen and seventeen hundred tons. Q.—What business in connection with the *Palm Tree* took you so often to the Chincha Islands, if you were only on board of her three or four times. Ans.—My transactions and other things. I looked after her bills and disbursements there. The most of the money was paid at Callao. Some of the visits to the Islands had reference to Mr. Vaughan's business. Question.—Did you ever render an account of your personal expenses to Callao to Mr. Smith? Ans.—Through Mr. Robinson I did. [Mr. Morrison here says I do not mean any thing but Mr. Robinson. I mean did you render your account personally to Mr. Smith.] Ans.—No; I did not render an account to Mr. Smith. I do not know of my own knowledge that Mr. Robinson ever gave that account to Mr. Smith. Q.—What do you mean when you say you rendered your account to Mr. Smith through Mr. Robinson?—I mean I gave the account to Mr. Robinson. Q.—Did not Mr. Smith ask for these accounts? Ans.—No; he did not. I do not recollect that he asked me for them at any time. I went to England from Callao after I returned from Callao, by direction of Mr. Thomas Vaughan. Mr. Smith would want me there. Mr. Smith was not at Liverpool when I got there. I received at Liverpool instructions about going to London. Mr. Henry Vaughan sent me to London. I don't think I asked Mr. Smith in London for any money to pay my expenses. I did not see him at Liverpool. Mr. Smith only asked me once for the bottomry bond. I do not recollect the time exactly; it was in the boarding house in London. We boarded in the same house. Q.—In July, 1867, did he not ask you when you were coming from the Victoria dock, in London, ask you for the bottomry bond? Ans.—No; I do not recollect that he did; nor do I remember that he did so about the month of August, that

it might be lodged at Mr. Strang's office. There was no necessity of his asking for it. He could have taken it often without asking me for it. I had not the bottomry to give him when he asked me for it. I handed the bottomry bond to Mr. Vaughan the evening before Mr. Smith asked me for it; but I do not recollect the time. Mr. Vaughan was going to Liverpool, and I gave it to him. Q.—Did you not distinctly refuse to give the bond to Mr. Smith when he asked for it, and while you had it in your possession? *Ans.*—No; I never refused to let Mr. Smith have any document in my possession about the ship. There was no need of him asking me for them. Q.—On or about the fifteenth of August, A. D. 1867, did you write to Mr. Smith from Liverpool to this effect: "After due deliberation, I find I shall want every document in my possession in my final settlement with yourself, and until that time all vouchers belonging to myself; but until I am settled with by you, will not give up any document in my possession." [Objected to—first, that the letter should be produced to the witness, and that he cannot be interrogated as to the contents of a letter in that way.] *Ans.*—It is most likely I did, and was quite right in doing so. Q.—Then how do you reconcile your former statement, that you did not recollect refusing Mr. Smith any papers in your possession, and that there was no need of his asking you for them, with the answer you have just made? *Ans.*—You never asked me whether he wrote to me? Q.—Did not Mr. Smith in London revoke your power of attorney, and forbid you acting under it? [Objected to.] *Ans.*—I do not recollect that he did. Q.—Did he not intimate to you that you were acting hostile to him, and forbid you acting in his interest for him? *Ans.*—No; I do not recollect that he did. I always acted for his interest. The reason I gave the release to Lloyd Low & Co., was because they asked me for it. I am not certain that Mr. Smith requested me to give it. I think most probably he consented to my giving it. I do not know what the inward disbursements to London were. I presume they would amount in all to five hundred pounds, discharging and all, but this amount would not include the seamen's wages. The inward disbursements, dockage and seamen's wages, would amount for the *Palm Tree* to two thousand pounds; by inward disbursements I mean pilotage, steamboat hire, towage, dockage, seamen's wages, discharging cargo, commissions on cargo outwards and inwards. When I said five hundred pounds a minute ago, I included in it her dockage, steamboat hire, and discharging cargo: this is my opinion of what the amount would be. The persons who proceeded against the ship in England were Roberts & Potter. I do not know whether Roberts or Potter were partners of James Baines & Co. I do not know anything about them. Eight hundred and eighty-six dollars were only about one-half of my expenses from Saint John to Callao and back. I don't think much of it was in Peruvian gold. It was mostly in gold. I gave the account to Mr. Robinson on my return. There are boats built especially for guano boats. The boat I got from the *Palm Tree*, and let the *Sarawak* have, was a ship's long boat, and stronger than an ordinary one. The *Sarawak* did not want the boat at all. The reason I suggested that the boats be changed was that the *Palm Tree's* boat was a better boat for carrying guano than the one received from the *Sarawak*—I mean for carrying guano; but the *Palm Tree* had loaded with this boat. At the

no necessity of his asking me for it. I handed it to Mr. Smith as he was going to distinctly refuse it while you had it. Mr. Smith had no need of it at the end of August, and I did not want a boat that was better fitted for carrying guano than the one I let go to the *Palm Tree*. I saw the boat the *Palm Tree* got from the *Sarawak*; it was a good boat. I do not know what number of water casks the *Eurydice* got from the *Palm Tree*. I know she got some dumplings from her—some shooks—some water-cask shooks. I think Mr. Smith and the captain were with me when I took the *Palm Tree's* papers up to Lloyd, Low & Co.'s, in London, after the ship had entered. I put a stopper on the freight myself at London.

Re-examination of Albert Betts :

When I put a stopper on the freight, I mean that I gave a notice—the witness is asked by Mr. Morrison if the notice was in writing, and he says it was. The answer is then objected to.] to Thomson, Bonnar & Co. that I held a bottomry on the freight. Thomson, Bonnar & Co. were agents in London for the Peruvian Guano Company. The freight could be coming through them. The guano freights always come through them. I gave the release to Lloyd, Low & Co. for the reason Mr. Morrison objects that the document would speak for itself, and that its contents could not be gotten in that way, and that the question was too leading.] that I had put a stopper on the freight, and was obliged to give it to get that much out of the freight. Q.—You spoke of the seamen's wages, inward disbursements and dockage at London : would they be paid out of freight at London from Callao? [Objected to as too leading.] Ans.—Yes, and they were paid out of this two thousand pounds. [The witness here states, in answer to Mr. Morrison, that he knows the seaman's wages, inward disbursements and dockage at London were paid out of the two thousand pounds from statements made to him by the captain; and Mr. Morrison here objects to this evidence being taken.]

Adjourned until the twenty-ninth day of August, instant, at half-past six o'clock.

August 29th, 1871.

Met pursuant to adjournment. Present : Mr. Barker and Mr. Forbes for the part of the plaintiffs, and Mr. Morrison on the part of the defendants.

Re-examination of Albert Betts resumed.

The amount drawn at Callao was not drawn against freight, but the captain gave a receipt for so much freight as money paid on account of it. The *Sarawak* was coppered before I arrived at Callao. Q.—Did you, while at Callao, attend to all the business of the *Palm Tree* that was sent there by Mr. Smith to do? [Objected too as too leading.] Ans.—Yes. Mr. Smith, when he was in England, saw both the bottomry bonds and the other papers I had. He saw them more than once. I did often, while I was in England, conversations with Mr. Smith concerning the bottomry bonds, and what I did at Callao. The matter was talked over between us frequently. He said the bottomry bond that I took at Callao he had been told by Mr. Miller was not worth the paper it was written on, and he believed so himself. He never asked me for the bond verbally but once. There was no need. The amount credited

to the *Sarawak* of the *Palm Tree's* freight was two thousand four hundred and seventy-six dollars and twenty-nine and one half cents—was in Peruvian currency. I went to Callao exclusively on Mr. Smith's business, but he told me to attend to any of Mr. Vaughan's ships that came in my way while I would be down there. I received no more of the freight of the *Palm Tree* than what I have mentioned. The water cask shows that the *Eurydice* got from the *Palm Tree* were only good for dunnage, and could not be sold at Callao. They might be sold in England, but they would be as much value to the *Palm Tree* as they would be to the *Eurydice*. The captain should have sold them at Melbourne.

ALBERT BETTS.

Adjourned until 30th August, at two o'clock, p. m.

AUGUST 30th, 1871.

Met pursuant to adjournment. Mr. Barker and Mr. Forbes were present on the part of the plaintiffs, and Mr. Morrison on the part of the defendants.

The testimony of Captain Betts having been concluded, the matter is adjourned until the thirteenth day of September next, at two o'clock, p. m.

SEPTEMBER 13th, 1871.

Met pursuant to adjournment. Present as before.

Adjourned until the nineteenth day of September, 1871.

SEPTEMBER 19th, 1871.

Met pursuant to adjournment. Present as before.

James Robinson called, and being sworn, says:

I am one of the plaintiffs. I am one of the executors of the late Thomas Vaughan. I know the firm of D. & T. Vaughan. I have been in their employ for about twenty years, as their clerk and book-keeper. I have, during that time, had an intimate knowledge of their business. I know Mr. James Smith and his son Robert. I know this vessel, the *Palm Tree*, that has been spoken of; and I also know the premises described in mortgage in question, known as "Smith's Building." I know the two mortgages put in evidence—the one on the Queen's square property, and the one now in course of foreclosure. [The paper marked A. C. N. S., which had been proved by Mr. Smith, is now handed to the witness, who says]—The signatures to this, are the signatures of James Smith, David Vaughan, Thomas Vaughan, and Henry Vaughan; and I am the subscribing witness to it. The date of the paper is thirty-first day of December, A. D. 1864. [The paper is put in and read.] The paper [now put in the witness' hands] is the mortgage of the ship spoken of in the paper just read. [The mortgage is marked D. C. N. S., and dated the 20th June, 1865, and is put in evidence.] The mortgage is on the ship *Palm Tree*. I was Clerk for Messrs. D. & T. Vaughan at the time the *Palm Tree* was being built. This account, marked C. N. S., dated July 8, 1871, is Messrs. D. & T. Vaughan's account against Mr. Smith. The account is in my hand writing, and the monies included in it as per

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BERT BETTS.

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ere paid by me, and the money went through my hands. I paid the
money as follows:

On January 28th, 1864,..... \$2,000 00
Receipt B2 put in.
On March 31, 1864,..... 1,000 00
Receipt C2 put in.
On April 21, 1864,..... 1,000 00
Receipt D2 put in.
On April 30th, 1864,..... 1,000 00
Receipt E2 put in.
On May 10, 1864,..... 2,000 00
Receipt F2, and order attached, put in.
On 28th May, 1864,..... 2,000 00
Receipt J2 put in.
On June 10, 1864,..... 2,000 00
A check put in. This check is signed by D. & T. Vaughan, is for
1,000, and was paid. The check is signed on the back by Robert
Smith, son of James Smith, and is put in, and marked c.n.s., Sep-
tember 19th, 1871.
On date of 27th July, 1864, I paid [Receipt I2 put in]. \$5,000 00
The paper marked A2 put in. This is an order for the \$2,000 for
which the check of the 9th of June, 1864, was given.
On the 13th day of August, 1864, I paid..... \$2,000 00
Receipt W2 put in. This receipt is signed by Robert Smith.
On the 23d September, 1864, I paid..... 2,000 00
Receipt O2 and order X1 put in. The receipt is signed by Robert,
and the order X1 is for the amount for which the receipt is given.
On the 6th of October, 1864, I paid..... \$2,000 00
Receipt G2 put in.
On the 29th of October, 1864, I paid..... 4,000 00
Receipt H2 put in.
On the 18th November, 1864, I paid..... 4,000 00
Receipt K2 put in.
On the 26th November, 1864, I paid..... 1,000 00
The receipt is signed by Robert Smith, and is marked S2, and is put in.
On the 1st of December, 1864, I paid..... \$1,000 00
The receipt is signed by Robert Smith, and is marked R2, and is put
in. This is an order marked Z1, and the body and signature is in the
hand-writing of Mr. Smith, and is an order for the last two sums that I
as last mentioned. The order is put in.
On the 10th day of December, I paid..... \$1,000 00
The receipt is signed by Robert Smith, and is marked Q2, and is put in.
On December 13th, I paid..... \$1,000 00
The receipt is signed by Robert Smith, and is marked P2, and put in.
This is an order dated 10th December, 1864, and is signed by James
Smith, and was given for two amounts last above mentioned. The order
marked Y1, and is put in.
On the 7th of January, 1865, I paid..... \$2,000 00
The receipt is signed by Robert Smith, and is marked T2, and is put
in. This order is signed by James Smith, and was given for the last
mentioned \$2,000. It is marked W1, and is put in.

On the 4th day of February, 1865, I paid..... \$400 00

This is a check for the amount. The check is signed on the back by Robert Smith, and is put in, marked c.n.s., September 19, 1871, No. 2. This is an order for the \$400, and is signed by James Smith. The order is marked V1, and is put in.

On the 9th day of February, 1865, I paid..... \$2,000 00

This is the receipt, with the order, for the money. The order is signed by James Smith, and the receipt by Robert Smith. The paper is marked U1, and is put in.

On the 24th day of February, 1871, I paid..... \$2,000 00

This is a check for the amount. The signature on the back of the check is Robert Smith's signature. The check is marked c.n.s., September 19, 1871, No. 3.

On the 9th March, 1865, I paid..... \$2,000 00

This is the order for the \$2,000, and is signed by James Smith. The receipt for the money is on the back of the order, and is signed by Robert Smith. Receipt and order are marked T1, c.n.s., and is put in.

On the 8th of April, 1865, I paid..... \$2,000 00

The order for this sum is signed by James Smith, and the order on the back of the receipt is signed by Robert Smith. The order and receipt are marked S1, c.n.s., and are put in.

On the 6th of May, 1865, I paid..... \$2,000 00

The receipt for the money is signed by Robert Smith, and is marked U2, and is put in. The order for the same is signed by James Smith and marked R1, and is put in.

On the 13th of June, 1865, I paid..... \$2,000 00

The receipt for the money is signed by Robert Smith, and is marked V2, and is put in. The order is marked P1, and is signed by Mr. Smith, and is put in. This is all the cash that is charged in the account. The balance of the account—six hundred and thirty-nine dollars and twenty-nine cents—was paid by me to Mr. James Smith, in two sums. One was of the amount of one hundred and fifty dollars. This sum was paid on the order of James Smith to Robert Smith. The receipt on the back of the order, and the receipt marked L2, are for one and the same amount. [The receipt marked L2, and the order marked O1, are put in. The order is signed by James Smith, and the receipts by Robert Smith. This one hundred and fifty dollars was paid at the date of the receipt, eighth day of July, 1865. This receipt, marked X2, is signed by James Smith himself, and was given for the last payment of the balance of the account. I had, previous to this last payment, made up this account just as it is now; and I had, previous to this payment, rendered this account to Mr. Smith. This balance of four hundred and eighty-nine dollars and twenty-nine cents was taken by Mr. Smith as the balance of this account. The interest in this account is made up to the first of July, 1865, at 5 per cent. These three mortgages referred to in the credit side of the account are the mortgages upon the Queen's square property, the Prince William street property, and upon the ship. After the payment of the balance of the account, the Messrs. Vaughan advanced money to Mr. Smith on the freight of the ship. The ship sailed from here to Liverpool with deals. I was present when Mr. Smith and Messrs. Vaughan at the office in Saint John talked about the advance being made upon the freight

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the ship. Mr. Smith said it was impossible for him to get the ship to sea unless he had more money advanced to him, as he had a good many bills to pay. I know something of the bill of lading being endorsed over to Vaughan's by Smith. This order marked Q1, was signed by Mr. Smith, and the body is also in his hand-writing. Upon this order I paid the \$2,000 to Robert Smith, and the receipt endorsed on the back is signed by Robert Smith. The receipt marked N2, is signed by Robert Smith, and is for one and the same amount as the receipt endorsed upon the order. [The order marked Q1, and the receipt marked N2, are put in.] This order marked N1, is in Mr. Smith's hand-writing, and is signed by him: it is an order for \$6,200. I paid on this order \$6,000. The receipt endorsed on the back is in the hand-writing of Robert. The receipt marked M2, is for one and the same amount. [The receipt marked M2, and the order marked N1, are put in.] The reason I only paid \$6,000 on this last order was, that we had only agreed to advance \$6,000 on the freight, and this order made up \$200 more than the \$6,000. This eight thousand dollars was advanced by the Messrs. Vaughan on the first freight of the *Palm Tree* from here to Liverpool—upon her deal freight; and this sum is not in any way included in the account which I have been speaking of, and made up to the first of July, 1865; nor was it included in any of the three mortgages. It had nothing to do with any of them: it is entirely a separate transaction. Messrs. Miller & T. Vaughan received the freight upon which this advance was made. [The account last spoken of is again put in the witness' hands, and he says]—In addition to the amounts of cash paid, as I have already said, there are the following amounts charged against Mr. Smith, as follows:

On the 18th August, 1864, paid duty, per *Eleanor*, . . . \$30 36
This was paid for outfits for the *Palm Tree*. The duty was paid here for me for iron brought out by the *Eleanor*, and the goods upon which this duty was paid were delivered to Mr. Smith. This is the invoice of the iron marked c.n.s., September 19, 1871, No. 4, and is put in.

On 23d day of August, 1861, I paid duty on shipment, per *Princess Royal*, . . . \$156 40

This shipment was for Mr. Smith.

On September 1, 1864, I paid freight, per *Eleanor*, . . . 78 40
This was on goods for Mr. Smith.

On the 3d of September, 1864, I paid top wharfage on goods, by the *Eleanor*, . . . 4 14

These were the same goods I have spoken of for Mr. Smith.

On the 7th of September, 1864, I paid for top wharfage on goods per *Sea Gem*, . . . 1 84

These goods were also for Mr. Smith.

On the same day, I paid for freight, to *Princess Royal*, 92 97
This was also for goods for Mr. Smith.

On the 25th September, 1864, I charged for invoice of goods, per *Sea Gem*, . . . 48 14

I produce the invoice. The goods mentioned in the invoice were delivered here in Saint John to Mr. Smith. Messrs. Miller & Mossman, against whom the invoice was made out, were Messrs. Vaughan's agents at Liverpool. The reason the amount was charged as cash on the 27th

July, 1864, is that that was the date of purchase. [The invoice is put in (under objection from the Attorney General) and marked c.n.s., September 19th, 1871, No. 5.]

Adjourned until the twentieth instant, at ten o'clock.

SEPTEMBER 20th, 1871.

Met pursuant to adjournment. Present as before.

The examination of James Robinson resumed.

As to the item charged in the account on September 20th, 1864, *Eleanor* and *Princess Royal* cash, 6th July, three thousand two hundred and sixty-four dollars and forty-eight cents, the witness says as follows: There are a number of invoices charged under that head. The first one is an invoice of iron and spikes, per *Eleanor*, £261 6s. 6d. sterling; the next is iron, per *Princess Royal*, £69 4s. 5d. sterling, less two and one-half per cent. off, making it £67 9s. 10d. sterling; the next charge is yellow metal, £345 14s. 2d. sterling, less five per cent. off, making it £328 8s. 6d. sterling; the next is the shipping charges in Liverpool upon those goods, per *Eleanor* and *Princess Royal*—per *Princess Royal*, £1 12s. 11d. sterling; do., per *Eleanor*, £8 16s. 11d. sterling: the total amount being £667 14s. 8d. sterling; to which is added the exchange and premium, ten per cent., making the whole \$3,264.48. [The invoices making up this amount are put in, and marked as follows: the first c.n.s., September 20, 1871, No. 1; the second c.n.s., September 20, 1871, No. 2; the third c.n.s., September 20, 1871, No. 3; the fourth c.n.s., September 20th, 1871, No. 4.] This is the way that I make up the item \$3,264.48. The meaning of the discount stated upon two of the invoices, one at two and one-half per cent., and the other at five per cent., is that these amounts were taken off for paying cash. The reason the amount is charged cash first July, is that the cash was paid at that time. The goods included in these four invoices were imported by Messrs. D. & T. Vaughan for Mr. Smith. These goods were imported by arrangement made with Mr. Smith, and were materials for the *Palm Tree*. There was a verbal understanding between Mr. Smith and D. & T. Vaughan that they were to import for Mr. Smith goods and materials to be used in the construction of this ship. These goods mentioned in these invoices were delivered to Mr. Smith. He sent his own teams to the vessel, and got them; and I saw some of these very goods go into the yard where this vessel was being built. On the twenty-first day of September, 1864, I paid three dollars and seventy-seven cents, freight per *Sea Gem*, on some iron for Mr. Smith. This was upon the invoice I spoke of yesterday, \$48.14. The item on twenty-third September, 1864, top wharfage, seventeen cents, I paid on the invoice per *Sea Gem*. On the 30th September, I paid top wharfage \$3.80: this was for top wharfage upon some of the invoices for Mr. Smith. On October 5th, 1864, I paid \$1.70 for telegraph to New York, about getting some locust treenails; Mr. Smith asked me to telegraph to New York; he was anxious to get the treenails; they were for the *Palm Tree*, and they came. On October 31st, 1864, I paid for fourteen bars of strap iron \$68.67: the iron I delivered to Mr. Smith myself, out of Messrs. Vaughan's store; this was the cash price. On November 17th, 1864, I paid \$32.65 for freight of treenails.

invoice is put in New York; these were the treenails for which the telegraph was marked c.n.s., September 20th, 1871.

On the second December, 1864, I paid for invoice of these treenails \$309.80 gold (\$673.48 United States currency); this was at a discount of fifty-four per cent. This is the invoice marked c.n.s., September 1871, No. 5. [The invoice is put in.] These are the treenails upon which I paid the freight (\$32.65), and for which I telegraphed; these treenails were delivered to Mr. Smith, and I saw the same treenails in his yard.

December 31st, 1864, Messrs. Vaughan charge invoices of goods per *Raven*, \$2,567.52. This amount is made up—[The Attorney General objects to the invoices being put in; and it is agreed by counsel on both sides, that the invoices are all put in subject to objection]—by three invoices and some shipping charges. The first is an invoice of some knoeves, amounting to £443 2s. 2d. sterling. The second is for some red iron, amounting to £19 15s. 3d. sterling, with a discount of two one half per cent. off both these amounts for cash—making the two amounts £451 6s. 0d. sterling. The third is for two tons of oakum, £48 sterling, nett cash. The next charge is for shipping charges and insurance on these goods, £25 17s. 6d. sterling; making the total amount £525 3s. 6d. sterling; which, at ten per cent. for premium and exchange, makes \$2,567.52. [The invoices are put in, and marked as follows: c.n.s., September 20, 1871, No. 6; c.n.s., September 20th, 1871, No. 7; c.n.s., September 20, 1871, No. 8; c.n.s., September 20, 1871, No. 9.] On the twenty-ninth of November, 1864, these goods were charged as cash—that is, the time they were paid for. These goods came in the *Raven*, were delivered to Mr. Smith. I saw them afterwards in his own yard. They were goods imported by Mr. Vaughan for Mr. Smith; and they were material necessary for the completion of this vessel. The next charge is duty on goods per *Raven*, 76 duty upon iron. I paid this duty myself. The next charge is twenty-fifth January, 1865, for top wharfage on goods per *Raven*, \$10.63. I paid the amount myself. The next charge is for freight, per *Raven*, \$4.40. I paid it to Mr. Wallace, the owner of the *Raven*, on the third of February, 1865. This was the freight on these same goods. On the fifteenth day of February, I paid for recording one of these cargoes that Mr. Smith gave Messrs. Vaughan, \$5.60. This was the ten's square mortgage. I paid the amount to Mr. Drury. On the fourteenth of March, 1865, is the next charge for thirty bars of yellow metal, \$450.52. I delivered this myself to Mr. Smith; it was some weight in the store in Saint John, and was for fastening for this vessel. This was the cost of the thirty bars, and the cash price at the time. The next charge is on the twentieth March, 1865. Invoices of sundries per *Raven*, and some shipping charges; in all, \$5767.44. The first is an invoice of rope, amounting to £547 7s. 2d. sterling. The next is an invoice of anchors and chains, amounting to £350 8s. 1d. sterling—other making £897 15s. 3d. sterling, upon which there is a discount of two and one half per cent. for cash, amounting to £22 18s. 10d. sterling; making the nett amount of these two invoices £874 16s. 5d. sterling.

The next invoice is for canvas, amounting to £280 16s. 9d. sterling; upon which there is five per cent. discount for cash, amounting to £14 0s. 9d. sterling; making the net amount of this invoice £266 16s. 9d. sterling. The next charge is for shipping charges, £38 1s. 8d. sterling;

total amount of the three invoices and the shipping charges, amount £1,179 14s. 1d. sterling; which, at ten per cent. for the rate of exchange and premium, makes the whole \$5,767.44. [The invoices are put and marked as follows: c.n.s., September 20, 1871, No. 10; c.n.s., September 20, 1871, No. 11; c.n.s., September 20th, 1871, No. 12.] This was charged as cash, on the 18th of February, 1865. This was the time the goods were paid for. These goods by the *Kalos* were delivered to Mr. Smith, and were imported by the Messrs. Vaughan for him, and was material for the *Palm Tree*. The next charge is on the 19th day of April, 1865: duty per *Kalos*, \$220.66. I paid this amount; it was duty on this shipment I have just spoken of. The next charge is on the 26th April, 1865: freight per *Kalos*. This ship was owned by Messrs. D. & T. Vaughan; and on that day I credited the ship with the freight and charged it to Mr. Smith. This was the proper amount. The next charge is for four chaldrons of coal that Mr. Smith got from Messrs. Vaughan. The coal was got from the *Kalos*. Mr. Smith was charged with the coal, and the ship credited with it. The coal was delivered to Mr. Smith's cartman. Mr. Smith spoke for the coals himself. The charge came to \$22. This was the price of the coal. They were not paid for at the time. The next charge is for insurance on *Palm Tree*, \$1,417.77. The insurance was effected in England by Miller & Mossman, by their directions. They were acting for us in England. The amount was £1,417.77 sterling, with seven pounds taken off, discount allowed by the underwriters in England. It is usual for Messrs. Vaughan to get a discount on their insurance in England, as they have an arrangement to get a count on paying cash. This makes the amount of the cash premium \$1,417.77. The next charge is on the 24th June, 1865, for canvas, bill, \$138.79. I delivered the canvas to Mr. Smith from Messrs. Vaughan's store; it was for the *Palm Tree*; and this was the cash price for it. The bill of it was delivered to Robert Smith, on the 28th June, 1865. I also delivered to Mr. Smith canvas for the *Palm Tree*, to the amount of \$30.57: this was the cash price for it. There was a bill of exchange furnished. The next charge is for seventy-five days interest on sterling remittances on \$11,647.58, amounting to \$143.58. That means this: the invoices are charged at the rate of sixty day bills, which takes five days the time they are purchased from the bank about seventy-five days before they mature, and are paid; and having charged these invoices at the rate of sixty day bills, and the ten per cent. premium, being the rate on sixty day bills at that time; and if the bills had been drawn sight, the premium would have been as much heavier as the seventy-five days interest added to the ten per cent. would be.

Adjourned until Friday morning, at ten o'clock, the 22d instant.

SEPTEMBER 22d, 1871

Met pursuant to adjournment. Present as before.

Examination of James Robinson resumed.

The next item in the account is commission at two and one-half per cent. on forty thousand dollars. This is the commission spoken of in the agreement, dated the thirty-first day of December, 1864, and in evidence. The invoices of which I spoke, and which have been put in

ce, were shown to Mr. Smith when he would come into the office, and copies and memorandums of them were in all cases given to Robert Vaughan, in order that he might credit Messrs. Vaughan with them in his books. When the goods arrived, Mr. Smith was apprised of it, and he and got them; and I directed the parties on board the ships to deliver the goods to Mr. Smith. [What he told the parties on board the ships is objected to by the Attorney General.] There never was a time at which Mr. Smith requested to see these invoices that he was refused. I never heard from him, or any one else, that he had not received them as mentioned in these invoices. Mr. Smith did not at the time inform me of this account, or at any subsequent time, make any objection to this account, or any charge in it. The nett amount of the freight we got out of the vessel—[The Attorney General objects to the witness stating what he got from the books of Messrs. Vaughan, the witness having stated he can only tell by reference to the books, and that he did not collect the freight himself. The evidence is not pressed at this point. A letter from Mr. Smith to Thomas Vaughan is put in the hands of the witness; this was proved by Mr. Smith, and is marked L, and is dated Liverpool, August 6th, 1865. The letter is read, and put in evidence. The witness says]—This letter was received at Messrs. Vaughan's office from Smith. [A letter dated 15th September, 1865, from James Smith to Thomas Vaughan, is put in the hands of the witness, who says]—This letter was received at Messrs. Vaughan's office from Mr. Smith. [This letter was proved by Mr. Smith, and is marked M. The letter is read, and put in evidence. A letter dated 25th November, 1865, from James Smith to D. & T. Vaughan, is put in the hands of the witness, who says]—This letter was received from Mr. Smith in due course by D. & T. Vaughan. [This letter was proved by Mr. Smith, and is marked N. The letter is read, and put in evidence. A letter dated 14th December, 1865, from James Smith to D. & T. Vaughan, is put in the hands of the witness, who says]—This letter was received from Mr. Smith in due course by D. & T. Vaughan. [This letter was proved by Mr. Smith, and is marked O, and is put in evidence, and read. A letter dated February 3d, 1866, from James Smith to D. & T. Vaughan, is put in the hands of the witness, who says]—This letter was received from Mr. Smith by D. & T. Vaughan in due course. [This letter was proved by Mr. Smith, and is marked P, and is put in evidence, and read. A letter dated 17th February, 1866, from James Smith to D. & T. Vaughan, is put in the hands of the witness, who says]—This letter is one that was received from Mr. Smith by D. & T. Vaughan in due course. [The letter was proved by Mr. Smith, and is marked Q. The letter is put in evidence, and read. A letter dated March, 1866, from Mr. Smith to D. & T. Vaughan, is put in the hands of the witness, who says]—This letter was received by D. & T. Vaughan from Mr. Smith in due course. [The letter is marked R, and is put in evidence, and read. The witness then goes on to say]—Q.—by Mr. Smith's letter to D. & T. Vaughan, of the 3d February.

1866, letter marked O, that he says that the balance of the freight, including £297 for premium of insurance home, charged in the disbursements at Liverpool, would be fourteen hundred and eighty-one pounds sixteen shillings and one penny. Have Messrs. D. & T. Vaughan credited Mr. Smith with this amount. *Ans.*—Yes; they have credited him with £1,474 16s. 1d. sterling, as the premium of insurance was £290, and not £297, as seven pounds had been taken off for cash payment, as I have already explained. *Q.*—Have you, for Messrs. Vaughan rendered Mr. Smith any account shewing this credit? [Objected to by the Attorney General. Question withdrawn.] *Q.*—Have you, for Messrs. D. & T. Vaughan, rendered the defendant, Mr. Smith, an account since the one of the first of July, 1865, that you have been speaking of? *Ans.*—Yes; I have. *Q.*—Can you state about what time? *Ans.*—I cannot; but I have rendered him since that time about three accounts. [Mr. Barker calls for these accounts, under the notice to produce, and the accounts are not produced.] *Q.*, by the Attorney General. How did you render the accounts? *Ans.*—I gave them to Mr. Smith or to Mr. Palmer, Mr. Smith's solicitor. *Q.*—When did you give them to Mr. Smith, or to Mr. Palmer? *Ans.*—I cannot tell; but it was about the time of the commencement of this suit; and they were furnished to Mr. Palmer as soon as Mr. Smith requested them. [The witness then goes on to say, in answer to Mr. Barker]—This paper, which I now produce, is a letter-press copy of an account I rendered to Mr. Smith. The original is in my writing, and I delivered it at Mr. Smith's own house. The credit in it of £1,474 16s. 1d. sterling, is the balance of the freight spoken of in Mr. Smith's letter of the third of February, 1866, less the seven pounds deduction on the insurance. The two sums of cash—£2,000 and £6,000—are the two sums spoken of before as advanced on freight from Saint John to Liverpool. The charge of a telegram from Halifax, 55c., I think was something about passages, but I cannot speak from memory. I could hunt up the telegram, and so. The charges in this account have nothing at all to do with the charges of the other account of first July, 1865. It was all closed up by the mortgages. Messrs. Vaughan advanced Mr. Smith on the freight from here to Liverpool over and above what they received on account there the sum of \$1,010.67, including interest on the advances up to 31st January, 1865, and the charge of 55c. for the telegram. There is a two and one-half per cent. commission charged on the amounts advanced on the freight; only six per cent. interest is charged. *Q.*—Will you explain how the £290, charged in the account of first of July, 1865, for premium of insurance from here to Liverpool, and also charged in the disbursement account of the vessel in Liverpool by Miller & Mossman at £297, has been so credited to Mr. Smith in his accounts, that he has not been charged twice with it? *Ans.*—After the insurance was ordered I received a direct note from Miller & Mossman, our agents, who effected the insurance for the amount, and charged it to Mr. Smith. I afterwards received the disbursements accounts, and then finding that the insurance was charged in those accounts, I added to the nett amount of freight which was £1,184 16s. 1d. sterling, as shown by those accounts, £290 sterling for insurance, and credited Mr. Smith with the £1,474 16s. 1d. sterling. [The copy of the account is now put in evidence, and

the freight, in the disbursement of eighty-one pounds. T. Vaughan credited his account was on the off for cash paid Messrs. Vaughan. [Objected to.]—Have you, Mr. Smith, anything you have been about what time principal. adjourned until half-past two o'clock.

et and adjourned until Tuesday, the 26th instant, at ten o'clock, A. M.

SEPTEMBER 26th, 1871.

et pursuant to adjournment. Present as before, except that Mr. Morrison appears for defendants.

This paper, which examination of James Robinson resumed.

rendered Mr. Smith in all these accounts. I have spoken of two of and now I produce the book, with a letter-press copy of the third in it. The original was in my hand-writing, and this one was by me. [The copy of the account is here put in, and marked—three sheets as C.N.S., Sept. 26, 1871, No. 1; C.N.S., Sept. 26, 1871, C.N.S., Sept. 26, 1871, No. 3.] No. 1, the witness says, is the Dr. side of the account; No. 2, the witness says, is the Cr. side of the account; and No. 3, the witness says, is the account mentioned in the of the mortgage on the *Palm Tree*, charged in the account No. the first charge in this account is \$1,010.67; this is the balance set down from the previous or second account. The second charge of Nov. 20th, 1866, paid telegram to New York, \$2.28. November 26, 1866, is the next charge in this account of £185 12s. ing, for insurance on *Palm Tree*. This was for insurance effected and by Messrs. Vaughan's agents, on the *Palm Tree*. I get at the edge from their accounts. The witness here states that the insurance was not effected by the agents, but by Mr. Thomas Vaughan, and the money paid by Thomas Vaughan. [Mr. Morrison here asks the witness if he was present, and saw the insurance effected, and the money. The witness says he was not. Mr. Morrison then objects to the witness stating any thing he does not know of his own knowledge.] I get the knowledge from Mr. Thomas Vaughan himself. The amount charged to Mr. Smith, and credited to Mr. Thomas Vaughan. [Mr. Morrison objects to this.] I have never seen the policies of the insurance, but I have seen copies of them. [As to the item, \$2.28, of November 26, 1866, the witness, after referring to his cash book, says]—This was a telegram to New York about a bottomry bond. This was given me, and was concerning the bottomry bond on the *Palm Tree*. That Captain Betts went out to Callao about. The telegram was

as follows, and is put in, marked c.v.s, September 26, 1871, No. 4. original is in my hand-writing. J. W. Ellwell & Co., are merchants New York. Brice, at Callao, is a merchant there. For this telegram paid \$2.28. This telegram was necessary in conducting the business with Mr. Smith. It was feared that possibly the vessel might arrive Callao before Captain Betts would get there, and the vessel be sold under the bottomry; so that we concluded that every precaution was necessary. I know this from the conversation that took place. [Mr. Morrison objects to this.] I think Mr. Smith was aware of this telegram being sent. The next charge in the account is on February 4th, 1867, telegram from Liverpool, cash, \$58.40. [The telegram is put in; dated November 14, 1866; it is marked c.v.s., September 26, 1871, No. 5.] It was this telegram that led to Captain Betts going to Callao, was the first intimation that we received of the bottomry bond being the *Palm Tree*. It was shown to Mr. Smith. The next charge is the 10th April, 1867, £523 18s. 3d. sterling (\$2,561.35), for insurance the ship *Palm Tree*. This was for insurance done in England. Morrison objects unless witness knows of it of his own knowledge. Witness says he was not present. Q.—How do you come to make charge against Mr. Smith, and under what circumstances? Ans.—Insurance was paid for by Munn, Miller & Co. [Mr. Morrison objects.] The witness goes on to say—I know it from the account current of Munn, Miller & Co. with Messrs. Vaughan. [Mr. Morrison objects to this.] into these accounts current, or to the witness stating what knowledge obtains from the accounts current referred to.] Munn, Miller & Co. were Messrs. Vaughan's agents at Liverpool at that time. The amount was charged by Munn, Miller & Co., to Messrs. Vaughan. [Mr. Morrison objects.] Q.—Did Mr. Smith know of this insurance? Ans.—Yes; he did. [Objected to.] The amount is charged at £1,000 sterling in the account; but this is a mistake; it should be £10,000 sterling. It is entered correctly in my book. The next charge is of June 1867, services of Captain A. Betts, four months, \$320. That item is for Captain Betts' services. This was paid for his services only, and was at the rate he spoke of in his evidence, of £200 sterling per year, and for attending to the business of Mr. Smith. This money was paid to Captain Betts by Messrs. Vaughan. I only charged Mr. Smith with four months of Captain Betts' time. Captain Betts was longer than four months away, but he said this was all the time he was away on Mr. Smith's business. He was away six months and one quarter of a month. The other two quarters of a month were for the time Messrs. Vaughan paid Captain Betts themselves for attending to their business. Q.—In reference to the charge of insurance, amounting to \$2,561.35, was that amount paid to Messrs. Vaughan by Munn, Miller & Co., or allowed to them in account? Ans.—Yes; the amount was credited by Messrs. Vaughan in the account with Munn, Miller & Co. [Mr. Morrison objects to the witness stating anything about allowing in account, or crediting in account.] The next charge was on April 8th, 1868, to Henry Vaughan, account in England, cash 11th February, £1,380 15s. 7d., at 9½ per cent., amounting in currency to \$6,719.78. I got this amount from Mr. Vaughan's account. [Mr. Morrison objects to the witness stating anything from Mr. Henry Vaughan's account.] This amount is marked

1871, No. 4. [The witness objects to.] First, Munn, Miller & Co., account £326 19s. 5d. sterling. Q.—Is this the account of Munn, Miller & Co., of which you speak. [Mr. Barker here shews the witness a paper.] Ans.—Yes; the amount of the account is £334 8s. 8d. sterling, but there were £7 9s. 3d. being deducted from it. [The account is put in, and marked c.n.s., Sept. 26th, 1871, No. 6.] This other paper, marked c.n.s., Sept. 26th, 1871, No. 7, is the items of the amount charged in No. 6 account at £3 3s. 1d. sterling. [Mr. Morrison objects to these accounts being put in, and to the witness stating how Mr. Henry Vaughan's account is made up.] I furnished copies of these accounts to Mr. Palmer for Mr. Vaughan, since this suit was commenced. Mr. Smith did not at any time render him the account of which I have been speaking—I mean the account I rendered him—ask for copies of these account of Munn, Miller & Co., marked c.n.s., Sept. 26, 1871, No. 6 and 7. Mr. Palmer—Mr. Palmer is Mr. Smith's solicitor in this suit—and I furnished these two accounts last mentioned to Mr. Palmer, and I so furnished them as soon as Mr. Palmer called for them, in addition to the Munn, Miller & Co. account. There were three separate payments to Lloyd, Low & Co.; the first payment was £608 16s. 2d. sterling. This is the paper shewing the amount which Mr. Vaughan paid. [Mr. Barker shows the witness a paper. The witness objects to.] Q.—Is this the paper you refer to when you speak of the account charged the £608 16s. 2d. [Mr. Morrison objects.] Ans.—Yes; this is the paper—[The paper is put in. Mr. Morrison objects to it.] marked c.n.s., Sept 26th, 1871, No. 8. I know the firm of Munn, Miller & Co.; we have had correspondence with them at our office. I know Mr. Vaughan personally. [The witness looks at the accounts marked c.n.s., Sept. 26th, 1871, No. 6 and No. 7.] The receipt on each account is signed by John Miller, one of the firm. I know his writing, and have seen him write. The correct name of the firm of Munn, Miller & Co. is A. Munn, Miller & Co., and they are not the same firm as Miller & Co. We have had correspondence at our office with Lloyd, Low & Co. Lloyd, Low & Co. never acted, so far as I ever heard, as the agents of Messrs. Vaughan, except in connection with the *Palm Tree*. Messrs. Vaughan had regular London agents—Messrs. "Ryan & Dale" finally, afterwards "Dale & Spring." They have been Messrs. Vaughan's agents ever since I have been in their office, and they are the agents of Messrs. Vaughan yet. [Mr. Barker shews the witness five (5) different papers], and the witness says the signatures are all in the handwriting of one person, and I believe the hand-writing to be that of the witness. I judge from having received many letters from them, but I never saw any of them write. They are marked as follows: c.n.s., Sept. 26, 1871, No. 9; c.n.s., Sept. 26th, 1871, No. 10; c.n.s., Sept. 26, 1871, No. 11; c.n.s., Sept. 26, 1871, No. 12. [These papers at present are not put in.] The next item in Henry Vaughan's account is paid Lloyd, Low & Co. £35 0s. 0d. The next one is £360 0s. 0d. The next one is Henry Vaughan's account of his own expenses, £50 0s. 0d. These three sums make up all sterling, and taken together, make up £1,380 15s. 7d. sterling, or £1,378 15s. 7d. currency, which Messrs. Vaughan have charged against Mr. Vaughan in the account.

adjourned until the twenty-seventh instant, at ten o'clock, A. M.

SEPTEMBER 27th, 1871

Met pursuant to adjournment. Present as before.

The examination of James Robinson resumed.

The next item in the account, marked c.n.s., Sept. 26, 1871, No. 1, April 15, 1868, to Munn, Miller & Co., account in Liverpool, cash July, 1867, £14 19s. 3d. sterling or \$71.82 currency. This charge consists of three items taken from Munn, Miller & Company's account with D. & T. Vaughan. The first is a charge, Bates' opinion, thirteen shillings and fourpence. The second is a charge for collecting insurance, £10 15s. 1d. sterling. The third is John Miller's expenses to London, £3 10s. 0d. sterling. This makes the £14 19s. 3d. I do not know any thing of the charges myself, except they are charged by Munn, Miller & Co. to D. & T. Vaughan against the ship. [Mr. Morrison objects to this testimony.] And I find them there, and consequently I charge them to Mr. Smith. These sums, amounting in all to £14 19s. 3d. sterling, were paid by Messrs. D. & T. Vaughan to Munn, Miller & Co. The next item is April 16th, 1868, to Captain Betts' account in London, cash first September, 1867, £34 4s. 11d. sterling, \$166.66. This is an account furnished me by Captain Betts. Captain Betts had gone to London previous to this. I heard Captain Betts give his evidence here in this case. I know of my own knowledge of Captain Betts going home from here to London, after his return from Callao. This would be the time that he was in London, that this account refers to. [Mr. Morrison objects that the account will speak for itself.] The account marked c.n.s., Sept. 26th, 1871, No. 3, explains the last charge in the account of \$46,718. It is the mortgage on the *Palm Tree* of forty thousand dollars, with interest, made up to 15th February, 1868. This account is dated the 16th April, 1868. This was the time, or about the time I rendered it to Mr. Smith. The first item on the credit side of the account is, November 26th, 1866, by cash from ship's boat, £10 sterling (\$48.66). This was the boat which Mr. Thomas Vaughan sold from the *Palm Tree* in England and I credited it by direction of Mr. Vaughan. I don't know of the sale myself. I took it from Mr. Vaughan. I saw the entry in his own book made by himself. The next is May 23d, 1867, received insurance claim per *Palm Tree*, £1,052 11s. 6d. sterling, or \$5,122.51. That was insurance collected in London on voyage to Melbourne. I know this from Dale & Spring's account, our agents in London, and I know it from Mr. Henry Vaughan also; and I credited the amount to Mr. Smith, by direction of Mr. Vaughan, as cash, ninth May, 1867. The next item is by cash paid balance to Captain Betts, balance from ship *Palm Tree*, Callao, in March 1867, \$1,174.40. I got this amount from Captain Betts. When Captain Betts returned from Callao, he furnished me with an account of his expenses. This is the account. [The witness refers to a paper which he holds in his hands. The paper is put in, and marked c.n.s., Sept. 27th, 1871, No. 1.] The total amount of his expenses at Callao, and going and returning, amounted to \$960.57, United States currency, according to the statement Captain Betts gave me. Captain Betts had in his hands from the *Palm Tree* the sum of \$2,475.94 Peruvian currency, equal to \$1,918.90 New Brunswick currency; from the amount the expenses account, equal to \$744.50 of our money, are

ER 27th, 1871, acted, leaving a balance of \$1,174.40, which is credited to Mr. Smith. The next item is April 9th, 1868, by cash sale of *Palm Tree* in London, 10,000 Os. Od. sterling, or \$43,666.66. This amount is made up with interest to the fifteenth of February, 1868, the time the ship was sold, which time I made a balance due of \$3,436.88. Q.—Is the five thousand pound mortgage in any way included in this amount? Ans.—No; it has nothing to do with it; it is separate and distinct from it. Q.—Did Mr. Smith at any time since this account was rendered to him, object, or make any objection, to any of the charges or credits in it? [Objected to by Mr. Morrison as too leading.] Ans.—No. Q.—At the bottom of this account, on the credit side, I see the following memorandum: The cost of suit against ship *Palm Tree* in the Admiralty Court London, G. B., is still pending, and any expense is still to be charged to T. V., per J. R. Was that memorandum on the account you rendered Mr. Smith precisely as it is there? Ans.—Yes; exactly. The original of this memorandum is also in my hand-writing. I mean by that memorandum, there were suits pending in London against the *Palm Tree*, and Mr. Vaughan had to find the money to carry on these suits. Mr. Smith has never paid this balance of \$3,436.88. Adjourned until 28th instant, at eight o'clock, P. M.

SEPTEMBER 28th, 1871.

Met pursuant to adjournment. Present as before, and the Attorney General with Mr. Morrison.

Examination of James Robinson resumed.

produce the account of Captain Betts that he furnished us of his expenses in London, amounting to £34 4s. 11d. sterling. [Mr. Morrison objects to going into this account, or giving any evidence of its contents.] The portion of the account footing up £34 4s. 11d., and between the name in two places written is put in (subject to Mr. Morrison's objection.) [The portion put in is marked c.n.s., Sept. 28, 1871, No. 1.] Q.—I rendered the account marked c.n.s., Sept. 26th, 1871, No. 1, I received from Mr. Smith at our office in the usual way this letter. This letter is dated 23d April, 1868, and is from James Smith to D. & T. Vaughan. [The letter is put in, and read and numbered, and marked c.n.s., Sept. 28, 1871, No. 2.] Q.—I see by this letter that Mr. Smith wants an account of the disbursements at Melbourne, Callao, Queenstown, and London, and of the freights. Had Messrs. Vaughan any of those accounts? Ans.—They had none of the Melbourne or Callao accounts (except Captain Betts' at Callao). The Queenstown accounts I never heard of: they never had them here. The London accounts I have seen; we have had them here: they were Lloyd, Low & Co.'s accounts, R. A. Munn, Miller & Co.'s accounts, and Mr. Wills' accounts. Munn, Miller & Co.'s accounts were of Liverpool, and not of London. These accounts of Lloyd, Low & Co. and Munn, Miller & Co., are some of which I have already spoken, and copies of which I furnished Palmer, as I have already stated. I think I did not reply to this of Mr. Smith's. Q.—Do you know whether Mr. Smith had, at that time, or previous to that time, the Melbourne disbursements accounts? [Objected to, unless, &c.] Ans.—I think previously to this I

saw the Melbourne disbursements accounts in Mr. Smith's possession. Q.—Since this account was—I mean the third account—rendered Mr. Smith, have you made any charges against Mr. Smith on account of the *Palm Tree*? [Objected to.] Ans.—Yes; they have. [Mr. Morrison objects to any charges that may have been made since the commencement of this suit.] The first charge is on the 18th of July, 1868, cash remitted Mr. Wills on account of the law suit in London, £107 4s. 8d., equal to \$526.98. That was remitted by S. Vaughan & Co., of Liverpool; they had the money in their hands, and were ordered to pay it. [Objected to.] The next charge is £200 0s. 0d. to Mr. Wills on account of expenses. This money was sent from here. [Objected to.] The money was sent on the sixteenth day of November; it was sterling; and in our currency amounted to \$986.66. I know it was received. [Objected to.] The money was sent by check on the Liverpool Union Bank. [Objected to.] The next charge is March the 9th, 1870, cash paid James J. Kaye, of Saint John, Barrister. The account amounts to \$26. I paid the amount of it to Mr. Kaye. [The account is put in, and marked c.n.s., Sept. 28, 1871, No. 3. Objected to.] Q.—Had the services charged in this account any references to the *Palm Tree*? [Objected to.] Ans.—Yes, they had entirely. The next charge is February 9th, 1871, remittance to Lloyd, Low & Co., to settle steamboat bill, £87 14s. 0d. sterling, equal to \$428.75. [Objected to.] Q.—What did this bill refer to? [Objected to.] Ans.—To the *Palm Tree*. The money to pay this bill was remitted by S. Vaughan & Co., of Liverpool. [Objected to.] The directions to pay this to S. Vaughan & Co. were in writing. The credit on the last account is as follows: Sept. 28, 1870, balance of freight per *Palm Tree*, in London, £101 8s. 5d. sterling, equal to \$493.56 currency. The account ends the credits on that account. Q.—What do you make the balance due by Mr. Smith to D. & T. Vaughan at this date? [Objected to.] Ans.—\$4,913.71, exclusive of interest on the last account: this includes the balance of \$3,436.88 previously due. This last account has never been rendered Mr. Smith. Q.—Are these charges of money paid to Mr. Wills, the expenses to which you alluded in the memorandum appended to the third account, rendered to Mr. Smith? [Objected to.] Ans.—Yes; I have never seen Mr. John Wills write. I had had correspondence with him at our office. I have written letters to him, and have received letters in reply. From correspondence I have had with him, I have no doubt but these papers are signed by him.

Question by Mr. Morrison—Do you know, of your own knowledge, whether any of the letters received by the Messrs. Vaughan from Mr. Wills, to which you allude, are written by Mr. Wills personally? Ans.—I do not know.

Mr. Barker resumes the examination.

I know of Messrs. Vaughan writing letters to Mr. Wills—[objected to] and their receiving replies to them—[objected to]—and judging from the signatures to these letters, I believe the signatures to these letters to be the signature of Mr. Wills. [Mr. Morrison objects to question and the answer given by Mr. Robinson.] These letters, at the request of Mr. Barker, are marked Sept. 28, 1871, No. 4; Sept. 28, 1871, No. 5; Sept. 28, 1871, No. 6; Sept. 28, 1871, No. 7; and Sept.

1871, No. 8, for the purpose of identification, should they be afterwards
 offered in evidence.] The Messrs. Vaughan went into receipt of the
 rents and profits of the mortgaged premises, on the first of August, 1868.
 [Mr. Morrison.] From that time to the present, the whole amount of the rents received,
 is \$3,706. [Objected to.] In addition to that, they received \$45; in all,
 \$3,751. Q.—What is the total amount paid out by Messrs. Vaughan on
 account of the mortgaged premises? Ans.—\$1,363.17. [Objected to.]
 Of this amount, \$231 were for insurance, \$456.08 were for taxes and water
 rates; the balance is mostly made up of necessary repairs in Water street—
 the floors had to be taken out, and new joists and new double floors had to
 be put in—the old ones were quite rotten. The roof had to be repaired by
 Mr. Fisher, at a heavy expense; a considerable item was for masons' work
 in timber, and materials and painting. These repairs were necessary, and if
 they had not been done, the tenants would have moved out—some of them.
 paid for these repairs. Q.—What was the amount the tenants were pay-
 ing when you went into possession? [Objected to.] Ans.—George
 Stewart was paying £80 0s. 0d. cy. [Mr. Morrison objects, that if this
 means what the tenants were paying to any one else than Messrs.
 Vaughan, that the witness should not state it.] John Armstrong was
 paying £75 cy.; Signor Hazazer, £55 cy.; Francis Collins, £50 cy.
 The shop was vacant at the time we took possession. The premises have
 been occupied since we took possession, except the flat occupied by
 Hazazer: that has been vacant since the first May last. We got a tenant
 for the shop that was vacant when we took possession on the first of the
 following May—they were J. & H. Foster, and they paid £50 the first
 year. In 1869, the building was all occupied; and in 1870 also. The
 total rental in 1869, was £310 cy.; for 1870, £310 cy.; and this present
 year two tenants on Water street pay £5 cy. each a year more than they
 paid last year; but the upper flat not being rented, the total rental for
 this year, is £265 cy.; and the hall has been rented this year occa-
 sionally, and we have received £11 5s. 0d. cy., which is not included in
 the rental above stated. When I speak of the hall and upper flat, I
 mean the part that was occupied by Hazazer. The hall occupies the
 whole of the upper flat, and is for a public hall, and we rent it or hire
 it out whenever we can. There are two stores on Water street, and two
 stores on Prince William street, and each store has a flat above it. These,
 with the public hall, make up the entire building. The first rent we re-
 ceived, was on first of August, 1868; and I have collected all the rent
 since that time, except two quarters, that two of the tenants had paid
 Mr. Smith in advance. I refer to Armstrong and Hazazer. These two
 quarters amounted to £32 10s. 0d. cy. The total amount of \$1,363.17
 paid out, is made up of taxes, insurance, repairs, and water rates, which
 leaves to credit of amount received, a balance of \$2,387.83, which would
 go to the credit of the amount due upon the mortgage. There has not
 been any interest or any principal paid on the mortgage. The amount
 due on the mortgage, would be the principal and interest since the first
 day of July, 1865—less the credit of \$2,387.83 received from rents, after
 paying the expenses I have spoken of. The arrival of the *Sarawak* was
 not known at our office before Captain Betts left for Callao.
 Adjournd till Monday evening at eight o'clock, the second day of
 October next, at 8 o'clock, p. m.

OCTOBER 2d, 1871.

Met pursuant to adjournment. Present as before.

Examination of James Robinson resumed.

The defendant, Mr. James Smith, and Mr. Henry Vaughan and Mr. Thomas Vaughan, have all lived in Saint John whilst the transactions concerning the *Palm Tree* were being carried on. They have all lived here for many years—since before the *Palm Tree* was built. Captain Betts did not go to Callao on Messrs. Vaughan's business. During the twenty years that I have been with Messrs. Vaughans, they have not had a lawsuit; this is the first one they have had during that time. [This is objected to by the Attorney General.] Mr. Palmer paid the mortgage on the Queen's square property, that Mr. Smith owned. Q.—Were the three mortgages the one on Queen's square property, the one on Smith's building, and the one on the ship, three distinct transactions. [Objected to.] Ans.—Yes.

Cross-examination of James Robinson.

I did not hear all the conversations that took place between Mr. Smith and the Messrs. Vaughan concerning these transactions. A good deal may have taken place that I never knew anything about. I was always under the impression that these three mortgages were separate transactions. They were made at different times. It was because they were made at different times that I regard them as separate transactions. The goods charged against Mr. Smith in the July account were got by him, not all at once, but at different times. In the July account—July 1st, 1865—I credit Mr. Smith with these three mortgages. In that account I credited the three mortgages as against the whole account, and not any one mortgage to any particular sum. I know this much of my own knowledge concerning the arrangement between Mr. Smith and Messrs. Vaughan; they were to buy the goods and send them out to Mr. Smith. There was, as a general thing, always one of the Messrs. Vaughan in England. Mr. Thomas Vaughan was, I think, in England when these goods were purchased. I think, in most instances, when, in the invoices, Messrs. Vaughan are charged with goods, they purchased them themselves; that is, Thomas Vaughan purchased them. I have no knowledge of the bottom being torn off the account marked c.n.s., September 20th, 1871, No. 11; neither have I any knowledge of any thing being torn off the account, marked c.n.s., September 20, 1871, No. 12. These accounts are just as they were received. We import goods for other people similar to those goods, and we have done this three or four times. It would be some trouble for a man to attend to these things in England. Mr. Vaughan expected for this to get nothing, except interest for his money that he was advancing. The money of itself was worth interest. He has charged two and one half per cent. commission on the business. You will see the item in the account. I mean to say that the two and one half per cent. commission was charged on invoices and on the moneys advanced. The two and one half per cent. was on the \$40,000; and they had in that to import the goods. Q.—Will you swear that the two and one half per cent. commission which you have charged in the account, was expressly meant as commission for Mr. Vaughan's services in connection with the

ER 2d, 1871.

ghau and Mr. Vaughan and Mr. Vaughan have all lived on the ship. That sum was part cash and part goods. There of the July, 1865, account, about \$48,000 and upwards in cash, the of about \$20,000, was for goods, interest, and other charges. than \$20,000 were for goods imported. The charge of two and half per cent. was not made on the goods imported, but upon the of the mortgage. Mr. Vaughan made no more profit on these ortations than what you see in that account. It is not usual for rs. Vaughan to import goods for nothing. I know of no case where Vaughan imported goods for nothing: this is the nearest to it that I of. Messrs. Vaughan's did not make a red cent out of those in—*not a red.* I will swear that the amounts charged for these in these invoices were the amounts in every case paid for them. I swear that Messrs. Vaughan paid for these goods the amount they ed Mr. Smith for them. I know this by Mr. Vaughan's own accounts: w by Mr. Vaughan's principles, too; I mean by Messrs. Vaughan's nts, their own accounts when they came home and their accounts with agents. The accounts with Messrs. Vaughan's agents would be their nts current with them. By their agents I mean Miller & Mossman, afterwards Munn, Miller & Co. And Mr. Vaughan bought some s there direct from the parties. In the cases where the goods are ed directly to Messrs. Vaughan might or might not have paid for directly. He might, in some cases, have got orders for them. We got the accounts shewing these invoices. I shewed them here. Why did you not give these invoices to Mr. Smith? *Ans.*—Because belonged to Mr. Vaughan. *Q.*—They belonged to Mr. Smith, did ot? *Ans.*—They were imported for him, but I wanted vouchers r accounts. I furnished him or Robert copies of all of them. I am ain that I gave him full details of them. I may have given me- dums of them, but they were produced; he saw them all. *Q.*— invoice marked c.n.s. September 20th, 1871, No. 10 [the invoice in witness' hands], did you give Mr. Smith a copy of it, or only orandum? *Ans.*—I cannot say. I may have given him a copy, y a memorandum to Mr. Smith or Robert. When I speak of me- dum, I mean the total amount of the invoices, the nature of the and the name of the vessel generally. As to all the invoices, and f them, I cannot say whether I gave a copy of them or this memo- m of them. In some cases I know I gave a copy. In some cases t I handed the invoices to them, but I won't swear positively. *Q.*— e of these invoices I see there are two and one-half per cent., and e of them five per cent. discount charged, is the usual discount for and what is the reason of the difference? Yes; that is the usual nt; and in those cases where there is five per cent. discount, Mr. got off two and one-half per cent. better than other parties. mination postponed until Wednesday evening, at eight o'clock, the instant.

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OCTOBER 4th, 1871

Met pursuant to adjournment. Present as before.

Cross-examination of James Robinson continued.

Q.—Will you shew from your books your accounts with the party to whom you credit the several shipments referred to in the invoices ready put in? *Ans.*—The witness, by reference to his books, shows that the shipments are credited to the several parties in England from whom they were purchased, at the price charged against Mr. Smith. [Summary of the answer is thus entered by consent of counsel on both sides.] Q.—Were the several advances represented by the mortgages the Queen square property, the Prince William street property, and the ship, made by Messrs. D. & T. Vaughan? *Ans.*—Yes; they were; these several mortgages were all taken for and on the behalf of Messrs. Vaughan. The mortgage on the ship to Henry Vaughan was for the firm of D. & T. Vaughan. All the mortgages were for and on behalf of Messrs. D. & T. Vaughan. The Queen square mortgage was paid on eighth of August, A. D. 1868; the amount paid was \$9,400 that is to say, \$8,000.00 principal, and \$1,400 for interest. Q.—What was the gross freight of the *Palm Tree* from here to Liverpool? *Ans.*—I can tell by reference to the papers; accounts of the *Palm Tree's* earnings and disbursements were not always rendered to us. Q.—Did you not from time to time get from England accounts of her earnings and disbursements? *Ans.*—We got from Miller, Mossman & Co. her freight list, and an account of her disbursements inwards connected with the freight. We got no account of her disbursements outward on the Melbourne voyage. There was an account for disbursements paid by Messrs. Vaughan to Munn, Miller & Co.; but I do not know, without looking at the account, whether they were inward or outward disbursements. Messrs. Miller & Co. were the agents of Messrs. Vaughan; before they were agents, Miller & Mossman were their agents, but they failed about the time, between May and July, 1866, and after that Munn, Miller & Co. became Messrs. Vaughan's agents, and have continued as such from that time. I know of my own knowledge that the account marked C. September 26, 1871, No. 6, was paid. I was not in England when it was paid; it was paid in England; I did not see it paid. Munn, Miller & Co. did not tell me they paid it. Mr. Vaughan paid the bill on his responsibility. I do not know what arrangement he made with Mr. Smith about it. I do not know what right Munn, Miller & Co. had to make charges against the *Palm Tree*, or how they came to do so. I never got a copy of any agreement had with Baines. I never received the freight list or passenger list of *Palm Tree* from Liverpool to Melbourne; such lists never came to D. & T. Vaughan's office. We never received any accounts from Baines & Co.; we never had any business with them. We had plenty of correspondence with Miller & Mossman and kept copies of all our letters to them. We knew at the office of D. & T. Vaughan that the *Palm Tree* was going to Melbourne. Q.—Did Messrs. Vaughan ever receive accounts of disbursements of *Palm Tree* at Melbourne? *Ans.*—There was one envelope come from Melbourne to Liverpool to Messrs. Vaughan, with papers in the envelope, but I cannot say what they were. I gave them to Mr. Smith. I knew at the time I dare say, what they were; but I did not consider that they concerned

BER 4th, 1871

Messrs. D. & T. Vaughan's business. I saw that they were *Palm Tree* papers. No other *Palm Tree* papers came to D. & T. Vaughan's office, except the London papers, and Captain Betts' papers. The insurance papers did not come here to us. I do not know who had charge of the insurance papers in England; it would be Mr. Vaughan, or Messrs. Vaughan's agents. We had no connection out here in Saint John with insurance papers. I think we had no letters from Captain Griffiths in Melbourne or Callao. We might have had. Q.—Did not your Liverpool agents send you letters, or copies of letters, from Captain Griffiths? [Objected to.] Ans.—I do not know. Q.—Could it be possible that you would receive such, and not know it. Ans.—I would be known at the time if such were received, but I do not know now. I do not know of receiving any letters or papers about the *Palm Tree* in Bright Brothers at Melbourne. All the accounts and papers concerning the running of the *Palm Tree* did not pass through my hands. I have none of the disbursements accounts of the *Palm Tree* at Callao, except what appears by the London accounts put in, and Captain Betts' accounts. I went for Captain Betts when he was first wanted to go to Callao. We had three vessels there at that time. I can't say if they were all there at the same time, but they were all there when Captain Betts was there. It was not known here that the *Sarawak* was at Callao when Captain Betts left here, but it was known she was bound there, and it was also known at the office at that time when she had left for Callao from Bombay or Aden. The *Sarawak* had been up, and fixed up, and coppered before Captain Betts left here. The other two ships of Messrs. Vaughan that were there at that time were the *Eurydice* and the *John Parker*. Captain Betts did not go out there on Messrs. Vaughan's business. He would not have gone there only for the *Palm Tree*; but whilst he was there, he did some business for us out there. He may have saved us something by being out there. We might have had to pay perhaps heavier bills had he not been there. We had a new ship in the *Eurydice*. But I cannot say whether it saved any money for Messrs. Vaughan or not, but it might have saved something, as much as the passage. Q.—What did you give Captain Betts the power of attorney for—I mean the power of attorney that Captain Betts spoke of as having received from Messrs. Vaughan? Ans.—I do not recollect Messrs. Vaughan giving Captain Betts a power of attorney; they may have given him one. [This question and answer are objected to.] Q.—Have you seen such a paper since these proceedings commenced? [Objected to.] Ans.—Well, sir, I have seen some kind of a paper, but I cannot say what it was. Q.—Why cannot you tell what the paper was? Ans.—I have seen a document of some kind of authority, but I do not know its contents. Adjourned until the 6th instant, at ten, A. M.

OCTOBER 6th, 1871.

At pursuant to adjournment. Present as before.

Examination of James Robinson resumed.

—Have you Miller & Mossman's account and interest account for 1865 and 1866? Ans.—Yes. Q.—At what date do they charge in-

voices per *Eleanor* and *Princess Royal*, as cash? *Ans.*—[Objected.] I cannot tell without looking at the account. [Mr. Barker objects the witness looking at the account at this stage of the proceedings.] The witness looks at the account, and then says—the invoices per *Princess Royal*, purchased from Hunter & McArdle, were charged on July 21st 1864, £46 14s. 2d. sterling. The next one, per *Princess Royal*, the 11th September, 1864, £328 8s. 5d. sterling; bought from Moss & Co. Company, yellow metal. The next one, iron per *Princess Royal*, seventh July, 1864, £67 9s. 9d. sterling. *Q.*—I see that the yellow metal purchased from Moss & Co. is charged as cash 13th September, 1864; it is one of the items charged in your July account, 1865, invoice of sundries per *Eleanor* and *Princess Royal*, at \$3,264.48, was it not? [Objected to.] *Ans.*—Yes. *Q.*—Why is it, then, that in your account of July 1865, against Mr. Smith, you charged the invoice of sundries per *Eleanor* and *Princess Royal*, which includes this account of Moss & Co.'s cash 6th July, 1864, when Moss & Co.'s account appears as cash 13th September, 1864? *Ans.*—It was cash 6th July, 1864, as that was the time the cash was due. Moss & Co. may have given Miller a line of credit, but that was none of our business; but I do not know this of my own knowledge. *Q.*—Is there any thing on your books, or in your accounts which you have from Miller & Mossman, to shew that as against Messrs. Vaughan's these goods were charged as cash 6th July, 1864, and not as cash 13th September, 1864? [Objected.] *Ans.*—In the book it is charged against Mr. Vaughan as cash 13th September, 1864. I am now speaking of Moss & Co.'s account. *Q.*—The above charge of £328 8s. 5d. sterling in Miller & Mossman's account is the amount of the invoice, with the discount off for cash, is it not? [Objected to.] *Ans.*—Yes. *Q.*—Why is it, then, that when Mr. Vaughan was charged with £328 8s. 5d. sterling as cash on 13th September, 1864, you charged Mr. Smith with the same goods as cash £328 8s. 5d. sterling on the 6th July 1864; and charged him, therefore, with interest for two months and seven days previous to the time when Messrs. Vaughan were charged with the amount of the above account? *Ans.*—Because Mr. Vaughan was liable to pay it that day, and it was bought for cash. *Q.*—Is there any thing in your books to shew that Messrs. Vaughan's were liable to pay, or did pay the amount, on the 6th July, 1864? [Objected to.] *Ans.*—Yes. There is a charge on the books to shew they were liable to pay it on that day. I mean a charge on the books against Mr. Smith. *Q.*—When did you get Miller & Mossman's account current of the year 1864? [Objected to.] *Ans.*—We probably got it at the end of January, 1865. *Q.*—The account rendered against Mr. Smith, charging him with cash, 6th July, 1864, was rendered several months after the receipt by Messrs. Vaughan of Miller & Mossman's account, in which the goods are charged 13th September, 1864. I refer to Moss & Co.'s invoice, £328 8s. 5d. sterling. *Ans.*—Yes. *Q.*—Where is the invoice of Hunter & McArthur, per *Raven*, charged as cash against Mr. Vaughan, in Miller and Mossman's account? [Objected to.] *Ans.*—19th December, 1864, I charged against Mr. Smith as cash 29th November, 1864, the day purchased. *Q.*—The same amount which you charge against Mr. Smith as cash 29th November, 1864, and bearing interest from that date is charged against

—[Objected to.] Messrs. Vaughan in Miller & Mossman's account on December 19th, 1864? Q.—Then in that account you credit them with this shipment and debit them with payments? [Objected to.] A.—Yes. Q.—Was there an invoice from the Mersey Steel and Iron Company of £443 2s. 2d. sterling, included in the invoice of sundries per *Raven* in your account of July 1865? Ans.—Yes, less £11 1s. 2d. discount for cash; the amount charged against Mr. Smith was £432 1s. sterling. This amount was charged against Mr. Smith as cash 29th November, 1864. —At what date did Messrs. Vaughan's, or Miller & Mossman for Messrs. Vaughan's, pay for these goods? [Objected to.] The above amount of £432 1s. 0d., I mean? [The witness is here asked by Mr. Barker if he only knows this from the accounts of Messrs. Miller & Mossman, and he says that is the only way he knows it.] The Attorney General then asks the witness as follows: Q.—You mean, do you, the accounts rendered by Miller & Mossman to Messrs. Vaughan, and now in Messrs. Vaughan's possession? Ans.—Yes. Q.—You have an account with the Mersey Steel and Iron Company in your books, have you not? Ans.—Yes. [Objected to.] Q.—Then did you not charge the several sums against Mr. Smith for the different shipments from the information you received in these invoices and accounts? Ans.—I had some other information. The other information was from Mr. Thomas Vaughan. Q.—I ask you in at what date did Messrs. Vaughan, or Miller & Mossman for them, charge this amount of £432 1s. 0d. sterling for the goods purchased from the Mersey Steel and Iron Company? [Objected to.] Ans.—The payment was made in three payments by Miller & Mossman on behalf of Messrs. Vaughan, namely, the 22nd December, 1864, £150 sterling; the 10th January, 1865, £150 sterling; the 10th January 1865, £132 1s. sterling, making £432 1s. sterling. Q.—Why is it that when Messrs. Vaughan were purchasing these goods for Mr. Smith, they should have charged him for them as cash at an earlier date than they really paid for themselves? Ans.—Because they were really settled for by Mr. Vaughan giving an order for them on Miller & Mossman at the date of the charge: this order was in writing. Q.—How do you know any such order was given? Ans.—Because Mr. Vaughan said so. Q.—Were these several amounts of which you have spoken as having been paid by Mr. Vaughan at the several periods later than they were charged to Mr. Smith, the amounts of the several invoices, with the discount off for the same? Ans.—Yes; they were as paid by Miller & Mossman. Q.—Was Messrs. Vaughan & McArthur's bill for oakum shipped per *Raven* one of the charges made against Mr. Smith in your account of July 6th, 1865, under the head of invoice sundries per *Raven* cash 29th November, 1864? —It is? Q.—When was such bill paid by Messrs. Vaughan? —The bill was paid by Miller & Mossman the 22nd December, 1864, charged against Messrs. Vaughan by Miller & Mossman the same day. [Objected to.] The amount was £48 sterling. Q.—Was Tinsley & Co.'s accounts for anchor, chains, etc., amounting to £343 19s. sterling, one of the items included in your charge against Mr. Smith in your accounts of July 1865, per *Kalos*, as cash 18th February, 1865? —Yes, together with another small bill of £6 8s. 7d. stg. Q.—Were these two accounts paid as cash by Mr. Vaughan or by Miller & Mossman for them? Ans.—On the 7th July, 1865. The amount of

these two bills was paid with a bill due and paid 7th July 1865; but instead of charging them against Mr. Smith at that date, we charged by cash 18th February, 1865, deducting two and one half per cent. as the average duty of purchase of the two bills. The canvas account from the Edinburgh Sail-cloth Company, at £280 16s. 9d., was also included in the above charge against Mr. Smith per *Kalos*, cash, 18th February 1865. Mr. Smith was allowed five per cent. on that. The net amount charged against Mr. Smith was £266 10s. sterling. This latter amount was paid by Messrs. Vaughan at the date of the purchase, so far as we know. I suppose this was the time. *Q.*—Don't your books show that no part of this was paid until the 17th day of May, 1865. [Objected to.] *Ans.*—No. Alexander & Lott are the agents for the Edinburgh sail-cloth company. We kept a credit and debit account with Alexander & Lott to show what we got from them. When I received an invoice credited them, and I credited them with this invoice. [Objected to.] This appears by my books shown here. I debit them with the cash payments. *Q.*—In the account shown here do you debit Alexander & Lott with any sum paid prior to March 17th, 1865? [Objected to.] There is no account of Alexander & Lott shown here at all or put in evidence. *Ans.*—I don't, but our agents do. *Q.*—At what date do your agents debit Alexander & Lott with payments on such account? [Objected to.] *Ans.*—There is a larger sum than that paid for that and other accounts on the 15th March, 1865.

Adjourned until the 7th instant, at two o'clock, p. m.

OCTOBER 7, 1870

Met pursuant to adjournment. Present as before.

Cross-examination of James Robinson resumed.

Q.—The invoice of Alexander & Lott, amounting to £547 7s. sterling, was, I think you said, one of the charges included in the charge in the July 1865 account of invoice of sundries per *Kalos*, cash 18th February? *Ans.*—Yes, it was cash, less two and one half per cent. making the amount charged against Mr. Smith £533 13s. 6d. The amount was paid by Mr. Vaughan to Alexander & Lott, but I cannot say at what time. This stands in the same way as the canvas account. I debited Alexander & Lott with the amount when I got Miller & Mossman's accounts on the 17th May, 1865. This was the time I made the debit, but I had received Miller & Mossman's accounts before this. I entered it as cash paid previous to that day. I entered it May 17, 1865, to cash from Miller & Mossman. [Objected to.] I entered £2,000 sterling that day to the debit of Alexander & Lott. I charged this £2,000 against Alexander & Lott's credit, and one of those credits would be the cordage account of £533 13s. 6d. sterling. Although entered at that time, it was paid previous to that. Some of our own books show that it was paid previous to that: my day-book shows that it was taken from Miller & Mossman's account. *Q.*—Will you show when it appears in your books to have been paid to Alexander & Lott? *Ans.*—I will show you wish me. *Q.*—What is the date, and what the book, and what the form of the entry showing such payment? [Objected to; question withdrawn.] The insurance on the ship *Palm Tree* from Saint

ly 1865; but we charged him 1 per cent. as an account from the insurance. I did not pay the premium. Mr. Vaughan or Miller & Mossman paid it. I know it by getting a debit note from Miller & Mossman. I think we have the note yet. I have no recollection of giving a note to Mr. Smith. The ship sailed from Saint John after the mortgage upon the ship was given, but I cannot tell the exact day. The twenty-ninth of April was not early to insure a ship that was not launched until the ninth of June. Miller & Mossman's account with us will show when the insurance was effected. I know of my own knowledge that the insurance was effected on the twenty-ninth of April. The insurance was effected in England. I was not in England at the time. I considered some accounts to Mr. Smith and Mr. Palmer. Q.—How do you suppose Mr. Smith could tell anything about these accounts when he had not them. Ans.—I do not suppose anything about it. Q.—When you rendered this July account to Mr. Smith, did you inform him that goods were charged him with interest from an earlier date than the date at which you paid for the goods? Ans.—I think it would be a very unreasonable thing for me to make such a statement as that. The copies of some accounts that have been put in evidence were delivered to Mr. Palmer. The accounts marked c.n.s., September 26th, 1868, No. 1, No. 2, No. 3, were given to Mr. Smith. They were given to him after the time they bear date, 16th April, 1868. They were given to him on or about the 16th April 1868. The letter of Mr. Smith of 23rd April, 1868, acknowledges the receipt of them. This letter is marked c.n.s., September 28th, 1871, No. 2. Q.—Did you furnish Mr. Smith with the particulars of the sale of the ship, to whom sold and by whom, as requested by Mr. Smith in his letter of the 23rd April, 1868, the same as just above referred to? Ans.—I could have told him to whom the ship was sold, but I did not think worth while to bother my head with it. I had no particulars of the sale to furnish him. The ship was sold to Messrs. Adamson & Ronaldson, of London, at auction by an auctioneer. She was sold by Mr. Vaughan under his mortgage. I never kept any accounts against the *Palm Tree*. I kept the accounts against Mr. Smith when I had anything to do with the *Palm Tree*. Messrs. Vaughan have now no interest in the *Palm Tree*, and never had, except through the mortgage. Messrs. Vaughan have no interest in the firm of Adamson & Ronaldson. Q.—Have the Messrs. Vaughan's, either directly or indirectly, any interest in the *Palm Tree*, or her earnings, or have they had any interest, either directly or indirectly, in the *Palm Tree*, except that of mortgagees from Mr. Smith? Ans.—None whatever. Mr. William Vaughan never had any thing to do with the *Palm Tree*, and no one of the name of Vaughan ever had any interest in her whatever. I do not know who are the owners of her now. I do not know that Mr. William Vaughan was the first purchaser of her under the mortgage. Mr. William Vaughan did not purchase her at all. I know the name of the purchaser from having made out the transfer, and put it through the Custom House. I will swear positively that William Vaughan never had any interest to do with her, nor any Vaughan, nor any of their friends. We have the Callao accounts and the London accounts of the *Palm Tree*, and as Captain Betts' accounts and the London accounts shew. Cap-

tain Betts gave us accounts on his return from Callao. The reason why he did not give the accounts that Captain Betts gave us to Mr. Smith was because I thought it a waste of time. *Q.*—Was it for the same reason that you did not give other accounts, or copies of them, of disbursement and charges at London to Mr. Palmer, until requested to do so by Mr. Palmer in 1868? *Ans.*—Yes. I do not know of any letters being received by Messrs. Vaughan from Captain Griffiths whilst at Melbourne or Callao. Messrs. Vaughan never got letters from Bright Brothers, Melbourne, concerning the *Palm Tree*. *Q.*—Did not Captain Griffiths, under date of 30th October, 1866, write a letter to Thomas Vaughan from Melbourne? [Objected to.] *Ans.*—I don't know any thing about letters sent to Liverpool. No such letter was received at Saint John that I know of. *Q.*—Did any of the Messrs. Vaughan's receive from Captain Griffiths from Melbourne Messrs. Bright Brothers & Co.'s accounts, also vouchers, and Lloyd's certificates and surveys, any or all of them? [Objected to.] *Ans.*—I have stated already that an envelope was received containing papers, which I handed to Mr. Smith. Whether they were I do not know. I do not know whether or not this envelope was addressed to D. & T. Vaughan. I saw the envelope in one of the drawers in D. & T. Vaughan's private office. The seal was broken. I know this because I had it in my hands. I know the envelope contained *Palm Tree* papers, because Mr. Vaughan said they were papers connected with the *Palm Tree*, and told me to give them to Mr. Smith. *Q.*—Do you know whether Mr. Thomas Vaughan received a letter from Bright Brothers & Co., from Melbourne, dated 26th October, 1866? [Objected to.] *Ans.*—I do not know any thing about it. *Q.*—Do you know whether Mr. Thomas Vaughan received a letter from Bright Brothers & Co., of Melbourne, dated 26th October, 1866, in which it was stated "We now beg to forward you the following accounts, account current, *Palm Tree*, and disbursement account"? [Objected to.] *Ans.*—I know nothing about it. I don't know anything about the account current, the disbursement account, you refer to. The captain who first was home in the *Palm Tree* was called Captain Feivouz. He was not engaged by Messrs. Vaughan. I am sure they did not engage him. I know a great deal about the *Palm Tree* whilst she was building. I don't remember Mr. Vaughan telling Mr. Smith to put the bilge logs in. I do not remember hearing him recommend Mr. Smith putting them in. I do not recollect any of the Messrs. Vaughan directing Mr. Smith to put in the fastenings. *Q.*—When iron knees were being put in, did you not hear David and Henry Vaughan tell Mr. Smith that they wanted an iron breast-hook over the upper ports, and three crotches in the run, with iron knees attached? *Ans.*—No; nor nothing of the sort. I heard no conversations between the Messrs. Vaughan and Mr. Smith concerning these things. I heard no conversations between Messrs. Vaughan and Mr. Smith about putting extras in the ship. I think I saw the materials named in the invoices going into the yard of Mr. Smith. I did not see the canvas going into the yard; it went into the sail loft.

Adjourned until the thirteenth October, 1871, at half-past ten o'clock.

OCTOBER 13th, 1871.

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Met pursuant to adjournment. Present as before.

Cross-examination of James Robinson resumed.

I did not see the canvas go into the yard. I did not see the rigging

into the yard either. I did not see all the materials go into Mr.

Smith's yard. Q.—Did you not open or take the papers from the envelope

in Mr. Vaughan's office, to which you referred in the examination

the last sitting; and in the presence of Mr. Smith state what they pur-

ported to be, namely, a statement of the accounts of the ship *Palm*

lost at Melbourne, and papers connected with the claim upon the insurers

loss? Ans.—I think not. I saw the envelope; that is all. I have

recollection of opening or showing them. I will not swear that I did

do so; but I am pretty sure I did not; if any body showed them, it

was Mr. Vaughan himself. I will swear now that I did not show any

papers to Mr. Smith connected with the Melbourne voyage, to the best

of my knowledge. I do not know how that letter was addressed. I do

know that it was addressed to Mr. Thomas Vaughan, care of Miller

Brosman, Liverpool, and the address then altered to Saint John. Q.—

Will you give me a copy of a letter written by Messrs. Vaughan to Miller &

Brosman, on or about January 15th or 19th, 1866? Ans.—Yes. The

original letter was not written by me. I copied it into the letter book

at the letter press. Q.—Can you in any way from Mr. Vaughan's books tell

the contents of such letter? Ans.—I can by referring to the letter book.

What was the contents of such letter? [Objected to.] Ans.—

I cannot say without looking at the letter book. Q.—By refer-

ring then to the letter book, what were the contents of such

letter? [Objected to. Mr. Barker saying that the copy is not evidence

without proof of the loss of the original; that the original, if produced,

should not be put in evidence by the defendants at this stage of the pro-

ceedings.] The witness here refers to the letter book, and says the copy

of the letter is as follows:

"SAINT JOHN, N. B., 15th January, 1866.

MESSRS. MILLER & MOSSMAN, Dear Sirs—Your esteemed favour, of 23d ultimo, received to hand, and contents noted. We received a long letter from Mr. James Smith, Portland, wishing us to allow him to send the *Palm Tree* on a voyage; which we consented to, providing he can find any person to fit her out for him. We cannot see him any more. If he concludes to send the ship on a voyage, we wish you to secure our claim on her—mortgage, \$40,000, sterling £8,333 6s. 8d.; advanced on her, \$8,000, sterling £1,666 13s. 4d.—£10,000 sterling, deducting what freight is due, credit over the balance, including the premium, if we have to pay it. You please consult Mr. H. V., if in Liverpool.

"Yours, truly,

"D. & T. VAUGHAN."

There are some other statements in the letter, but they do not refer to

Palm Tree. Q.—I see in this account marked c.n.s., September

1871, No. 1, that Mr. Smith is charged with several premiums of

insurance. Do you know of your own knowledge that such insurance

was effected? Ans.—I do, in a certain way. We have not the policies,

they are not in Messrs. Vaughan's office; they never were in Messrs.

Vaughan's office. I never saw them. I did not effect the insurance; it

was done in England. I know the item in the above account, of No-

vember 26th, 1866, for insurance, \$889.38, is correct. I know it getting a debit note for it. We got debit notes for all our insurance [The Attorney General objects to this answer.] Q.—Can you, of your own knowledge, state that the insurance was effected on the *Palm Tree* for which twenty-five hundred and sixty-one dollars and thirty-five cents is charged April 10th, 1867, in the account above referred to? Ans.—I did not see it done. I will not swear that any insurance was effected upon the *Palm Tree* for Mr. Smith's interest, but to protect Messrs. Vaughan's interest. Q.—You have credited Mr. Smith with £1,052 6d. stg. on account of insurance claim, May 23d, 1867: do you, of your own knowledge, know the amount so collected on insurance account? Ans.—No. I only know it from Mr. Vaughan; he collected it himself, I believe. Q.—I see in the account of Lloyd, Low & Co., put in evidence, Sept. 26, 1871, No. 8, the following charge: commission, *Palm Tree*, inwards, as agreed. Can you explain that? Ans.—No, I cannot explain it. Q.—Do you know anything of Mr. Vaughan having put a stopper on the freight in London? Ans.—No. I have no knowledge in any way of any such thing being done. This is the first time I ever heard it mooted. I never heard that from any person. Q.—Did you ever hear of Mr. Henry Vaughan doing anything in regard to the freight? Ans.—I never heard of Mr. Henry Vaughan doing anything to stop the freight; only I heard he gave bonds in London to the Admiralty Court to allow the ship to be discharged. [The Attorney General objects to the answer as not in answer to the question.] I only way in which I know of the amount of freight is by Lloyd, Low & Co.'s accounts. Mr. Smith did not tell me to charge the amount in Lloyd, Low & Co.'s account against him. I do not know what Messrs. Munn, Miller & Co. had to charge Mr. Smith with payments for the *Palm Tree* and owners; nor do I know what right Lloyd, Low & Co. had. Q.—Why did you charge Mr. Smith with Captain Betts' services four months, going to Callao, and also his expenses going and returning? Ans.—Because Mr. Smith employed Captain Betts to go, and then Captain Betts furnished me with this account. I do not know whether or not Mr. Smith was in England when Captain Betts came from Callao. Q.—Why did you not, when furnishing Smith with the accounts marked c.n.s., September 26th, 1871, No. 1, 2 and 3, which you rendered to him in April, 1868, furnish him with detailed accounts of the sums debited and credited to him therein? Ans.—Because Mr. Smith had put his property out of his hands. Q.—Why did you not in such accounts credit Mr. Smith with the freight of the *Palm Tree* from Callao? Ans.—Because we had not received it.

Adjourned until 14th instant at ten o'clock.

OCTOBER 14th, 1871

Met pursuant to adjournment. Present as before.

Cross-examination of James Robinson resumed.

Q.—Of the account marked c.n.s., Sept. 26th, 1871, No. 1, many of the items charged against Smith were paid by yourself? —Telegram to New York, \$2.28; Capt. Betts' services, \$320. These two items are the only ones in this account paid by me. I spoke

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ive of the balance of a former account carried into this, amounting
£1,010.87. This was the balance of the account connected with
ght? *Q.*—Of the credits in the account Sept. 26th, No. 2, how
ny, and which of the sums credited to Smith were received by your-
Ans.—Nothing in such account was received by me personally.
-In the account, September 26th, No. 3, is not interest calculated
ing six months' rests? *Ans.*—Yes. *Q.*—In the account, Sept. 26, No. 1,
ot Mr. Smith charged with the amount of the mortgage on ship and
rest calculated, with six months' rest, the interest every six months
g added to the principal, and both principal and interest thereafter
ing interest.—*Ans.*—The interest is calculated every six months, and
being paid; is added to the capital. *Q.*—Have you any letters from
Smith, that have not been put in evidence? *Ans.*—None but what
in Court. The *Palm Tree* was sold to Adamson & Rolandson,
not to Lloyd, Low & Co., although they were intermediate parties,
brokers. [Mr. King here proposes to show witness certificate of
ster of transfer of *Palm Tree* from Henry Vaughan to Henry Lloyd
Henry William Low, and ask witness if he is of the same opinion,
the ship was sold to Adamson & Rolandson. Mr. Barker objects
is. The question is improper, as stating the contents of a paper not
vidence; second, it is improper to show witness any such paper at this
e of proceedings; third, the question is objectionable.] *Ans.*—Yes
I am of the same opinion, and always will be. [Witness says this,
looking at the paper.] *Q.*—Why did you not, the other day, men-
that Lloyd, Low & Co. had something to do with the sale, and that
ship had been transferred to them. *Ans.*—I was not asked anything
t them. I was asked who the ship was sold to, and I told it. The
was not sold to Lloyd, Low & Co. *Q.*—Did you, the other day,
y that Lloyd, Low & Co. had anything to do with the sale of the
Palm Tree? *Ans.*—I did know. *Q.*—Why did you state that the rea-
you knew that Adamson & Rolandson had purchased the vessel,
because you made the transfer at the custom house, or had something
with making the transfer? *Ans.*—Because I had means of knowing
those parties had purchased the ship. *Q.*—You stated the other
that your means of knowledge of the sale to Adamson & Rolandson
derived from having made the transfer, or done something about
ing the transfer at the custom house. Was that correct, and did you
the transfer to Adamson & Rolandson? *Ans.*—I did not say that
de the transfer to Adamson & Rolandson. I made the transfer, and
ew how the thing went. *Q.*—Having referred to the matter of
fer, why did you not mention Lloyd, Low & Co.'s connection with
d that the ship was sold to them. *Ans.*—I was not asked to men-
Lloyd, Low & Co. I was only asked who the ship was sold to. I
she was sold to Adamson & Rolandson, partly from what was told
I knew nothing of it from the transfer at the custom house. Lloyd,
& Co. may have owned her for a day or so, or a week or so, by
Lloyd, Low & Co. did not sell her to any person. [Mr. Barker
ts.] Smith's building, for which the foreclosure of this suit is
ht, is not at present fully occupied. The hall or upper that is not oc-
d this year; it brought fifty-five pounds last year. The building
ully occupied from first May, 1869, to first of May, 1871. In 1868,

OCTOBER 14th, 18

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a portion of the building was unoccupied; one store on Water street and flat above, was unoccupied that year; the store and room above that was in 1868 unoccupied, now brings £55. We repaired the building several times. The mason work was done in midsummer 1870; it cost £118. The carpenter work was done in the early part of 1869, before May: other carpenter work was done to the building about a year later. Q.—Did not David Heffernon about the time that you were making the necessary repairs, and in the city of Saint John, tell you that such repairs were not necessary. A.—No, sir; he never at any time or place told me any such thing; he had nothing to do with it. I know David Heffernon well. I never asked Heffernon to make such repairs. I had conversation with Heffernon about that building. Q.—Did you not at or about the time you made such repairs, ask Heffernon if he would make such repairs, and for what he would do it; and did not he say that in his opinion those repairs were not necessary, or words to that effect? A.—No, I neither asked him to make repairs, or give estimate for repairs, and never said that repairs were unnecessary, or any words to that effect, as if he says so he lies. The accounts put in evidence of Lloyd, Low & Co, Munn, Miller & Co, and Captain Betts and Mr. Wills, all came to David T. Vaughan's office: they were brought there by Mr. Henry Vaughan. I do not know of my own knowledge how Mr. Vaughan got them.

Cross-examination closed.

Adjourned until this evening, at eight o'clock, at office of Forbes and Sinnott.

EIGHT O'CLOCK, 14th OCTOBER, 1871

Met pursuant to adjournment. Present as before.

Re-examination of James Robinson.

Q.—I see you stated on your cross-examination, in answer to a question by Mr. King, that you regarded these three mortgages as different transactions. What did you mean by that? Ans.—I meant that there were three different mortgages, and that money was given and got also on the three mortgages. Q.—Mr. King asked you if you knew anything about the bottom being torn off these accounts, marked C. Sept. 20, 1871, No. 11 and No. 12. Are the accounts just as they were when they came to your office? Ans.—Yes; just the same; they have not been mutilated in the least. Q.—Do you know any thing practised of the price of goods and materials for ships' purposes, such as you reported for Mr. Smith? Ans.—Yes; I did; we, at that time, were comparing such things for ourselves. Q.—How do the prices of Mr. Smith's goods compare with the prices paid by yourselves for goods for yourself at that time? [Mr. King objects, first, that it don't arise out of the cross-examination, and secondly, it is objectionable in itself.] Ans.—These invoices of the goods, do you know of Mr. Smith ever inspecting them at your office? [Objected to.] A.—Yes; I know of him and his son Robert inspecting them, and especially the invoice of wire rope. I know of Mr. Smith inspecting, he remarked upon the cheapness of the wire rope. Q.—Have you, Messrs. Vaughan's office, received any disbursement or other account

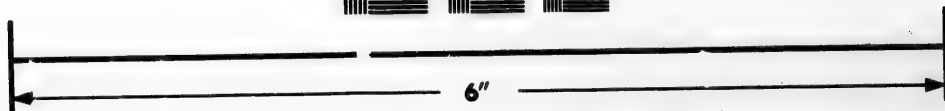
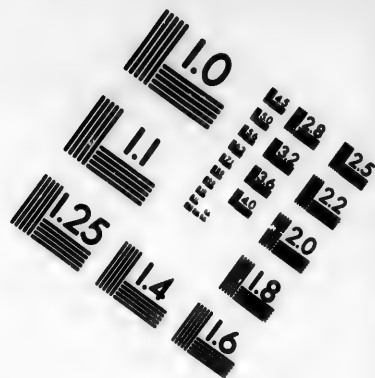
on Water street, the *Palm Tree* than those you have spoken of? *Ans.*—No. *Q.*—Did Messrs. Vaughan, so far as you know, after the vessel had gone into Messrs. Baines & Co.'s hands, up to the time that she arrived in England, on her return from Callao, in any way assume the control of the vessel? [Objected to.] *Ans.*—No. *Q.*—In reference to the invoices charged against Mr. Smith, I see you charge them against Mr. Smith at the date of the purchase, and charge interest from that time. Why is it that you charge interest from that time? *Ans.*—That was the date of the purchase for cash, and he got the benefit of the discount? *Q.*—Then, if I understand you, whether in point of fact the cash was paid to the sellers at the date of the purchase; still the discount was the same as if it had actually been made? [Objected to.] *Ans.*—Yes. *Q.*—Were or were not these purchases by Messrs. Vaughan cash purchases? [Objected to.] *Ans.*—Yes; they were all cash purchases. *Q.*—And did Mr. Smith, on the invoices charged against him, get the benefit of all the discounts allowed on actual cash transactions? [Objected to.] *Ans.*—Yes; he did. *Q.*—This envelope that you spoke of as containing papers belonging to the *Palm Tree*, and handed by you to Mr. Smith, was it ever returned to your office? *Ans.*—No. *Q.*—Do you know what the \$8,000.00 mentioned in Messrs. Vaughan's letter to Miller & Mossman, of January 10, 1866, as advanced on freight, and which they were directed to invoice, referred to? *Ans.*—Yes; it was the \$8,000.00 advanced on freight to Mr. John, on the freight from here to Liverpool. I never heard of Mr. Vaughan putting a stopper on the freight in London. *Q.*—Did you ever hear of any one doing it? [Objected to.] *Ans.*—Yes. *Q.*—Who? [Objected to, that this is all new matter, and upon other grounds.] *Ans.*—Messrs. Baines & Co. *Q.*—When you say the *Palm Tree* was not sold to Lloyd, Low & Co., although they were intermediate parties, what did you mean? *Ans.*—I meant that Lloyd, Low & Co. were agents of Mr. Vaughan at that time, and Mr. Vaughan sent them a bill of sale, and Lloyd, Low & Co. transferred the ship to the purchasers. [King objects to so much of the answer as refers to a purchase.] *Q.*—You say Messrs. Lloyd, Low & Co. at that time were Mr. Vaughan's agents, for what purpose were they his agent? [Objected to.] *Ans.*—For the purpose of selling the *Palm Tree*. I know David Heffernon. I spoke about in my cross-examination. He is a mason by trade, and a very good one. I am certain I had no conversation with him about the repairs, in reference to employing him. *Q.*—In what state were the premises before the repairs were put on them? *Ans.*—The floors and the whole of the lower flat on Water street were completely rotten; and the roof of the building was in a very bad state, leaking in many places; the stains are there yet where the water ran down; the boarding of the roof was some portion of it rotten; a great deal of the plastering of the upper room, and some of the shops below, wanted repairing; a portion of the ceiling of the upper room was all off, and the wall likewise leading to the upper flat had been misused, and the sills and side walls had been hammered off in places; the sky light in a pretty bad state, for the want of glass; several panes were out; the fronts of the shops on both streets were perfectly weather beaten, for want of paint; the chimneys were in a bad state, part of them had to be taken down, and then covered with cement; the ceilings, some of

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them, had to be whitewashed, as they were badly stained. Mr. Flo did the mason work; he is a very good workman. Silas Brown did the carpenter work; he was a competent workman, one of the best workmen in the city. Q.—Explain what the upper hall of this building is. Ans.—It is a public hall, running over the whole of the upper storey of the building, with two ante-rooms off. It is not a room that will like to be rented permanently [objected to] to a proper tenant. We could rent it but they would soon make a room of it. Q.—Have you ever, at any time, either with Messrs. Vaughan's directions, or without, refused to give Mr. Smith any accounts in your possession, or copies of any accounts connected with the *Palm Tree*? Ans.—No; we have never refused. Q.—Have you ever, at any time, refused to allow Mr. Smith to inspect any of these invoices, or any accounts, or papers, in your possession, connected with the *Palm Tree*? Ans.—No. Q.—Have you ever refused to give Mr. Smith any information that he asked for in connection with these invoices, moneys, and accounts, with the single exception of telling him to whom the ship was sold, in reply to his letter of the 23d April, 1868? Ans.—No. Q.—Has Mr. Smith, on any occasion, to your knowledge, made any objection to any charge contained in your accounts against him? Ans.—No; he never made any.

Adjourned until the 23d instant, at two o'clock, P. M.

October 23rd, 1871. Met pursuant to adjournment. Present as before. The examination of James Robinson resumed, and his evidence partly read over to him.

Adjourned until the 24th instant, at 2 o'clock, P. M.

October 24th, 1871. Met pursuant to adjournment. Present as before. Continued the reading of James Robinson's testimony, and concluded it, and then adjourned until the 25th instant, at seven and one-half o'clock in the evening.

JAMES ROBINSON

OCTOBER 26th, 1871

Met pursuant to adjournment. Present as before.

Henry Vaughan called, sworn, and says:

I reside in the city of Saint John, and have resided here for the last twenty odd years. I know Mr. James Smith; he has always resided in the province of New Brunswick so far as I know. I am a member of the firm of D. & T. Vaughan, and have been ever since it was formed upwards of forty years. I know the vessel called the *Palm Tree*. In the first place, Mr. Smith applied to me as a member of the firm of D. & T. Vaughan for money; he wanted five thousand pounds. I objected to myself, and my brother David also objected to let him have it. He said all he wanted was five thousand pounds; he then could contract or could sell, and he then would have that much to start with. He came to our office a great number of times still coaxing to get this money. I still objected to let him have it then. I went to England. Whilst I was in England [objected]. Before I left for England Mr. Smith offered to mortgage on Smith's building for security. He had not commented

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OCTOBER 26th, 1871

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holding the vessel before he first applied to us. He said he was going to build a vessel of a thousand tons, but when I went to England the matter had not been closed, and whilst I was in England the mortgage in question was taken, and when I returned from England I found the matter had been closed, and after I came back, Mr. Smith came to the office, and was understood between him and my brother, Thomas Vaughan, that the ship was to be of one thousand tons, and that Thomas was to contract for a sale of her in England. Thomas then went home to England. Mr. Smith was then about beginning the vessel, and I did not till after that know that Mr. Smith had contracted for a frame of a ship of fifteen or sixteen hundred tons. After he used up the five thousand pounds, he came to me and said, he must have more money; he had not been able to contract for her, and he must go on to finish the ship. I told him I could not let him have any more money without security; he said he would give me security on the Queen's property; he said he wanted me to take a mortgage upon that for three thousand pounds, which I objected to, and told him I would take a mortgage upon it for two thousand pounds, a power of sale mortgage. He got the mortgage drawn up, and fetched it to the office signed. This is the mortgage Mr. Palmer paid off. We let him have the two thousand pounds as he required it. After we let him have that amount, he came to me again, and wanted more money; he wanted enough then, said, to finish his ship. I asked him what security, he said he wanted three thousand pounds more; he said he would give us the lease of the ship, and security on the ship after the ship was launched; he said he would give us a mortgage on the ship for the sum of ten thousand pounds. He then went and got the agreement drawn up by Mr. Kay, and we let him have in money and outfits the ten thousand pounds. After the ship was launched, he gave us the mortgage upon her for ten thousand pounds; that is the mortgage in evidence here. Although the mortgage was taken in my name, it was for the benefit of the firm of Messrs. T. Vaughan, and was taken in my name, so that I could sell the ship in England, without reference to the parties here. As I was going to England, I was not in the yard more than three or four times while the vessel was building. I know about the bilge logs being put in the ship; but I never directed him to put them in. I told him if he did put them in, I thought the ship would sell better for it. I had nothing at all to do with directing as to the construction of the vessel. In the first instance, Mr. Smith only applied to me for five thousand pounds; he said that would be all he would require; then he afterwards applied for three thousand pounds more. He did not then say he would require any more; and then he lastly applied for the ten thousand pounds. I left for England after the ship was launched and before the ship left for England when the ship arrived there. I remained there until the second of February, and some time after my mortgage became due. Mr. Smith was in England during a portion of that time. I know the firm of Miller & Mossman. I have been present at this examination, and I heard Mr. Smith give his evidence. I heard what Mr. Smith said about attempting to sell the ship to a man by the name of Major. I know the man Major; he used to live in Saint John, and was a spar maker.

Q.—Please relate what took place between you and Mr. Smith as

to the sale of the *Palm Tree* to Major? *Ans.*—Mr. Smith came to my lodgings in Liverpool. I was sick at the time. He told me Major had come down from London, and made him an offer for the ship; he said he had offered him eight pounds ten for the ship per ton, and the ship having bilge logs in her, he thought he could squeeze the parties to eight pounds twelve shillings and sixpence per ton for her. He said Major told him he could get Fisher's ship for eight pounds five per ton; but the *Palm Tree* having bilge logs in her, he thought he would give her much more for her, as he would on that account sooner have her. He said Major was to meet him at his lodgings at two o'clock. I said to him—Mr. Smith, don't you lose sight of Major until you close with him, as you will never do better. I said the same thing to him several times. I did not see Mr. Smith again until the next morning, when he again called to see me, and I asked him if he had closed up with Major. He said no. I said—Mr. Smith, you will be sorry for it as long as you live. He then said his ship was worth more than what Major offered. I told him he could not get any more than the market price; that Major could get Mr. Fisher's ship at eight pounds five. Mr. Smith told me afterwards that Major had bought Mr. Fisher's ship at eight pounds five. When I speak of Mr. Fisher's ship, I mean Mr. Fisher, of Saint John, here. His ship was a new ship, built here the same summer the *Palm Tree* was, and had just gone home. I never, at any time, said anything to Mr. Smith about refusing Major's paper for the ship. I knew nothing about him giving paper. I supposed if he purchased the ship, he would pay for her in cash. I never at any time during that time I was in England do anything to prevent Mr. Smith from selling the ship. I was urging him to sell, as I wanted the matter wound up. I could not leave England until something was done about her; and when he got liberty from my brothers here to send her on a voyage, I left England, and came home. I was not in possession of the ship whilst I was in England. [Objected to by Mr. Morrison that he should not tell who was in possession.] *Q.*—Did you in any way interfere with the vessel whilst in England, or with her management? I mean the first time you were there, when the *Palm Tree* was there. [Mr. Morrison objects to the question.] *Ans.*—No farther than this—objected to the ship going on a voyage before she was sold. *Q.*—Did you at any time authorize Messrs. Miller & Mossman, or any member of their firm, or Mr. John Miller, to purchase the *Palm Tree* for you [objected to by Mr. Morrison], or negotiate for her purchase? *Ans.*—No. I never did; she was too large a ship for us. Mr. Smith wanted me to buy her. I told him no; we did not want her; that I would not give him seven pounds ten a ton for her, as we had more ships then than we wanted. I have been engaged in shipping for over forty years; in building, sailing, and purchasing them, and to a large extent. I am now engaged in sailing ships; but I was never engaged in any so large as the *Palm Tree*; the largest one I was ever concerned in was thirteen hundred and fifty-seven tons. *Q.*—Which would you consider the most profitable voyage of the two for the *Palm Tree*, to go from Liverpool to Australia, thence to Oallao, and thence to England, on the charter she actually did go on, or for her to have gone to Aden with coal at the rate Mr. Smith says he could have got for them? [Objected

with came to me Major had the ship; he said on, and the ship parties to eight. He said Major five per ton; but would give the have her. I said close with him several times, when he again with Major. As long as you live offered. I told that Major could Smith told me ship at eight o'clock, I mean Mr. ew ship, built had just gone about refusing giving paper. in cash. I never thing to prevent sell, as I wanted something was hers her to sell not in possession by Mr. Morrison. You in any way management? *Palm Tree* was there her than this— sold. Q.—Did any member of *Palm Tree* for you case? Ans.—No. h wanted me to would not give ps then than w forty years; to extent. I am in any so large if in was thirty consider the mo from Liverpool the charter with den with com em? [Objected]

Ans.—She would have left more money on the Australian voyage, and performed it in less time than she would the Aden. I was here when Captain Betts went out to Callao. I then went to England. I was there when Captain Betts returned here from Callao. Captain Betts went out to Callao on Mr. Smith's business in connection with the *Palm Tree*, to arrange about the bottomry that was on the ship. Neither I nor the firm of D. & T. Vaughan had any business at Callao, for which we sent Captain Betts out there. When he went we did not know we would have any business to do there. Our captains were competent to do all the business we have to do there. Our ships had been in that business a good many years, and we had never sent any person out there. We had five ships sailing at that time. It was known by us and by Mr. Smith here before Captain Betts sailed for Callao, that Baines & Co. had not paid for the outfits of the *Palm Tree* in England. Baines & Co. failed just a little while after the ship sailed from England. When Betts left here for Callao we knew the amount of the outfits put upon the vessel by Baines & Co.: the amount was between five and six thousand pounds. I had nothing to do, nor had our firm anything to do with putting the ship in Baines & Co.'s hands; it was Mr. Smith's own act. Q.—For what purpose, and upon what business, did you go to England when the *Palm Tree* arrived there from her Australian voyage? [Objected to.] Ans.—I went there to sell the *Palm Tree*, and wind her up. I had other business there too; but that was my principal business.

Adjourned until Saturday, the 28th instant, at two o'clock, P. M.

OCTOBER 28th, 1871.

Met pursuant to adjournment. Present as before.

Examination of Henry Vaughan resumed.

Mr. Smith was in England whilst I was there the second time, and Captain Betts likewise. Q.—I see in some of the accounts in evidence a charge of fifty pounds made, as paid for allowing the vessel to go to London, will you state how and under what circumstances this charge was to be made? Ans.—The *Palm Tree* was going to be arrested under Admiralty suit, when Mr. Smith, John Miller, and myself talked it over; if we could get our orders from Thomson & Bonard, to give to the port boats outside notice to prevent her from going into Cork. Mr. Lounds and Mr. Miller so. Mr. Miller said to Mr. Smith, in my presence, that Mr. Lounds would arrest her in Cork, if she went in there. Lounds was attorney for the parties who had the claims against the ship. We finally succeeded, after much correspondence with Thomson & Bonard, and Miller, in getting liberty to take the ship up to London, by paying £50. Mr. Smith knew of this correspondence between Thomson & Bonard, and Miller, and of the purport of it. Mr. Smith knew of the terms upon which Thomson & Bonard would consent to the ship going to London, and he seemed much pleased that the matter had been arranged so that the ship could go to London. He also knew of the fifty pounds being paid. This is a letter I received from Mr. Smith while I was in England; the letter is dated Cork, 11th June, 1867. [This letter was previously read, and is marked G1, c.x.x. The letter is read, and put in evidence.]

Mr. Smith went down to Cork about the time the ship was expected. This is another letter I received from Mr. Smith whilst I was in England; it is dated 17th June, 1867, and was previously proved, and marked F1, c.n.s. [The letter is put in evidence, and read. Mr. Barker calls for a letter referred to in this letter, of date 13th June, 1867, written from Henry Vaughan to James Smith, and the receipt of which is acknowledged in this letter put in evidence. The Attorney General says he will look for the letter.] This is another letter I received from Mr. Smith whilst I was in England. [The letter is dated June 21st, 1867, and was previously proved, and is marked E1, c.n.s. The letter is put in evidence, and read. Mr. Barker calls for the letter of the 19th June 1867, referred to in the letter put in evidence here. The Attorney General says he will look for it.] This is a letter I received from Mr. Smith whilst in England. [The letter is dated Queenstown, July 1, 1867, and was previously proved, and is marked D1, c.n.s. The letter is put in evidence, and read.] This is a letter I received from Mr. Smith while I was in England. [It is marked C1, c.n.s. It was previously proved, and is dated Queenstown, July 3d, 1867. The letter is put in evidence, and read.] I know the firm of Lloyd, Low & Co., in London. They were not our business agents in London. We never had any business with them until this business of the *Palm Tree*. Ryan & Dale and then Dale & Spring had been our agents in London for over four years; they are still our agents there. I gave no orders to our agents in London about the ship. Mr. Smith and Captain Betts left our instructions to go to Lloyd, Low & Co., to put the ship into Lloyd, Low & Co.'s hands. I had nothing in the world to do with putting the ship into Lloyd, Low & Co.'s hands. If I had given the orders, as Mr. Smith requested, I should have put the ship into Dale & Spring's hands. I do not know Lloyd, Low & Co. until after the ship was put into their hands. I had never seen them before. This is another letter I received from Mr. Smith. [It is dated 16th July, 1867, at London. It was previously proved, and is marked B2. There are two letters of the same date, and upon the same paper, and they are both read, and put in evidence.] The towage bill, mentioned in this letter, had been standing over since the ship went upon her Australian voyage; it amounted to £117 0s. 0d. sterling; it had to be paid, according to the decision of the Admiralty Court [the Attorney General objects to Mr. Vaughan stating what had to be done, &c.], and Mr. Wills compromised it at £80 (eighty pounds) sterling. This bill was for towage to the *Palm Tree*. I see in the second letter, of July 16th, 1867, Mr. Smith says that the Queenstown bill must be paid, and the Saint John insurance, and that they had better be arranged at once. Do you know what he meant by that? *Ans.*—It was for the stores he got at Queenstown. Mr. Smith drew his own bill for the amount, and subsequently Mr. Smith paid the bill, as he told me; at all events I did not pay it. *Q.*—What does he mean, in this letter of the 16th July, 1867, that Lloyd, Low & Co. refused to pay the towage bill out of the first payment of freight? [The Attorney General objects to this question.] *Ans.*—This was the towage bill I have referred to. Mr. Smith knew that Miller had written to Lloyd, Low & Co. that this towage bill would have to be paid, and he refused to pay it on account of the Admiralty having put a stoppage

ship was expected. [The Attorney General objects to this answer.] This is another letter I received from Mr. Smith whilst I was in England. [It is dated 18th July, 1867, London, and was previously proved. It is marked A1, and is put in evidence, and read. Mr. Barker calls for the letter of the 17th July, 1867, referred to in the one just read. The Attorney General says he will look for it.] This is another letter I received from Mr. Smith whilst I was in London. [It is dated August 14th, 1867. It was previously proved, and is marked Z, c.n.s. The letter is put in evidence, and read. This is also a letter I received from Mr. Smith while I was in England. [It is dated London, 14th August, 1867, marked Y, c.n.s., and was previously proved. The letter is put in evidence, and read. Mr. Barker calls for the letter of the 13th August, 1867, referred to in the letter just put in.] I never in any shape or form when the vessel was first in England, did anything to prevent Mr. Smith from taking the ship out of Miller & Mossman's hands, had he chosen so to do. This is a letter I received from Mr. Smith while I was in England. [This letter is marked X, c.n.s., and is dated London, 16th August, 1867, and was previously proved. The letter is put in evidence, and read.] I do not know whether or not a ship-keeper was put on board after this. That would be done through Lloyd, Low & Co. This is another letter I received from Mr. Smith whilst I was in England. [It is marked V, c.n.s., and dated London, 20th August, 1867. The letter was previously proved, and is put in evidence, and read. The letter of the 13th August, 1867, referred to in this letter, is called for by Mr. Barker. The Attorney General says he will look for it.] This is a letter I received from Mr. Smith whilst I was in England. [It is marked R, and was previously proved. The letter is put in evidence, and read.] Q.—In the accounts in evidence, there are charges made for moneys paid for insurances. Do you know of these insurances having been effected? A.—I did not effect the insurance myself. I saw the policies for over a thousand pounds insurance upon our mortgage. [The Attorney General objects to the answer, so far as relates to the contents of policies.] Q.—Did you ever have in your possession the average statement, protest, and vouchers, mentioned by Mr. Smith to you in this letter, marked R? A.—Yes; I did have them. I got them from Dale & Spring, our London agents. The ship was insured in London. Munn, Miller & Co. gave me the papers. I do not know whether they got them from Captain Griffiths, or from whom. They sent them up to Dale & Spring to collect the insurance. They were brokers. They collected it, and paid the money over to us, and we credited Mr. Smith with it; and then Dale & Spring gave me the vouchers, statement, and protest. I carried them down to Mr. Smith, at his lodgings in London, and said to him: now Mr. Smith, we have collected our portion of the insurance; there are the papers, now you go and collect yours. I gave him the papers. Mr. Smith afterwards told me he had taken the papers to Mr. Strang, and Mr. Strang was going to collect the claim for him. I do not know whether or not Mr. Smith got the money. He told me once they had offered to compromise with him. Mr. Smith told me Baines' broker told the policy, as Baines had not paid the premium of insurance. Whether an arrangement was made to get the policies or not, I do not know. Q.—Did you ever in any way prevent Mr. Smith from collecting his insur-

ance? *Ans.*—No; I did not; I gave him all the papers I had, and the same papers that I had collected our insurance upon. He never applied to me for those papers before this time. This was all I ever had to do with Mr. Smith's insurance; and farther than what I have related, I know nothing of the reason of the difficulty Mr. Smith had in collecting his insurance.

Adjourned until the ninth day of November, A. D. 1871, at ten o'clock, A. M.

NOVEMBER 9th, 1871.

Met pursuant to adjournment. Present as before.

Examination of Henry Vaughan resumed.

The insurance that I collected is what is credited Mr. Smith in the account: our agent collected it. *Q.*—Mr. Smith in his examination, said that he wished you to give security for the vessel when she was arrested in the Admiralty; did you do so? *Ans.*—No. *Q.*—Why did you not? *Ans.*—Because Mr. Wills advised me not to do so. [The Attorney General objects to the answer.] I mean Mr. Wills, the proctor, who has been spoken of. I did give the security afterwards. *Q.*—How came you to give the security afterwards. *Ans.*—Samuel Smith put her in the Admiralty Court. [Objected to by the Attorney General.] For wages, and he got judgment. [Objected to by the Attorney General.] The ship was advertised by the Admiralty [objected to by the Attorney General] to be sold on the 5th or 7th of February, 1868, or about the same date. The ship was appraised or valued by the Admiralty court, and went through the whole expenses just as if the claim was twenty thousand pounds, and just three or four days before the sale was to take place I was down at Cardiff, and in consequence of what I heard I went up to London, and saw Mr. Wills, and he advised me to give security bond for the vessel, and not allow her to be sold, as by my giving a bond they could not get at me, as mortgagee in possession. I then bonded him. I gave bonds for ten thousand pounds in London. Lloyd, Low and Deane and Spring went my bonds. [This is all objected to by the Attorney General.] I saw this paper before. [Mr. Barker puts a paper in witness hands.] This is one of the papers I received from Mr. Wills. [Paper offered in evidence, and put in by Mr. Barker: paper is marked c.w.s., Nov. 9th, 1871, No. 1. The Attorney General objects to the paper going in.] I saw this same paper upon the ship's mast—I mean the *Palm Tree's* mast. After I paid the claim—the judgment I mean—the vessel was taken off the mast, and the Admiralty office gave up charge of her. *Q.*—Do you know from conversations with Mr. Smith, what his son (Samuel Smith) claim against the *Palm Tree* was? *Ans.*—About eight hundred pounds. *Q.*—Do you know from Mr. Smith what that claim was for? *Ans.*—It was for wages. This is an account I received from Lloyd, Low & Co. [The account is one already in evidence, and is marked c.w.s., September 26, No. 12.] These are the vouchers that accompanied the account. [The vouchers are all put in evidence, and marked as follows: c.w.s., November 9th, 1871, No. 2 to 20 inclusive. The Attorney General objects to the vouchers being put in.] The writing on the back of the voucher marked c.w.s., November 9th, 1871, No. 9, is in Mr. Smith's

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and-writing, and the signature to the writing is also Mr. Smith's own
and-writing. Q.—I see in the account of Lloyd, Low & Co., a credit
follows:—February 22d, 1868, by cash received of H. Vaughan, Es-
quire, £608 16s. 2d. (stg.): did you pay that sum? Ans.—Yes. I paid
on account of the *Palm Tree*—it was a suit against the *Palm Tree*. I
have seen Mr. Lloyd and Mr. Low, of Lloyd, Low & Co., write. These
papers are in Mr. Lloyd's writing. I received both of these papers
from Lloyd, Low & Co. The papers are marked Sept. 26, 1871, No. 9
and No. 10. [These papers were previously marked, and are put in evi-
dence. The Attorney General objects to these papers going in evidence.]
These two papers are the receipts for the £608 16s. 2d., already spoken
of as paid Lloyd, Low & Co. by me. This paper is in the hand-writing
of Mr. Lloyd, of Lloyd, Low & Co. I mean the signature to the paper.
The paper is marked o.r.s., September 26, No. 11. I paid the thirty five
pounds mentioned in this receipt. We afterwards sold the *Palm Tree*
under our mortgage. We sold her in London, at English Lloyds rooms.
This was a public place, and one where ships were usually sold at auction.
I sold her at auction in February 1868. I was present at the sale.
Lloyd, Low & Co. were the brokers who sold her. She had never been
in their hands since her arrival in London. I never took her out of
their hands, and I did not put her in their hands. [This is objected to
by the Attorney General.] There were a good many persons present at
the auction. The sale took place in the day time. There were some two
hundred there so far as I could judge. There were persons there from
London, Liverpool, and Bristol, as bidders. The first bid, was, I think,
ten thousand pounds; and they went on with different bids, from that
to nine thousand pounds, and she hung a long time at that; and then
they went on and bid her up to nine thousand two hundred pounds.
Adamson & Ronaldson, one or other of them, bid nine thousand two
hundred and fifty pounds. [Objected to by the Attorney General.]
There were no more bidders. This was the last bid, and she was
struck down to them. [Objected to by the Attorney General.] Q.—
By your account with Mr. Smith, in evidence, you credit him with
ten thousand pounds, as the proceeds of the sale of the *Palm Tree*; why
do you do that when she was sold for only nine thousand two hundred
and fifty pounds. Ans.—Adamson & Ronaldson lost a ship, and they
sold one in the place of her. They went to Lloyd, Low & Co., and
then came to me. Mr. Low asked me if I had any notion of buying
the ship when she was sold at auction. I told him I had not. I told
him I had ten thousand pounds against the ship, and I was not going to
go for less than that amount. Mr. Low wanted me to sell her at
the sale, as under my mortgage I could do either. I said the better way
was to sell her at auction, and then there would be no fault found.
Adamson & Ronaldson said they would give me ten thousand pounds for
the ship, and if she sold at auction for less than ten thousand pounds,
they would still give ten thousand pounds; and if she sold for more than
ten thousand pounds, that I would have to lose the difference, and they
would get the ship for the ten thousand pounds. They made this offer,
I accepted it; and she sold for nine thousand two hundred and fifty
pounds; and they gave me ten thousand pounds for her; and I credited
ten thousand pounds to Mr. Smith. [This is objected to from the last

objection down to the commencement of this objection.] I have no interest in the *Palm Tree*, nor have any of our firm an interest in her, nor we have never had any interest in her further than the mortgagee was concerned. William Vaughan never had any thing to do with the *Palm Tree*, and he has nothing to do with her now; has not now, and never had any interest in her. He was present at the sale, and bid upon her, but she was not sold to him. I have not, nor have any of our firm an interest in the firm of Adamson & Ronaldson, and we never had an interest in the firm of Adamson & Ronaldson. The transfer of the vessel was made to Lloyd, Low & Co.; they were the brokers. Q.—Why was the transfer made to Lloyd, Low & Co., if the sale was made to Adamson & Ronaldson. [Objected to by the Attorney General.] Ans.—They were the brokers; the money was paid to them, and by them paid to me, and the transfer made by me to them. Q.—By whose directions was the transfer made to Lloyd, Low & Co. [Objected to by the Attorney General.] Ans.—By the directions of Adamson & Ronaldson. I got one cent more out of the sale of the vessel than the ten thousand pounds. I made a bargain through Lloyd, Low & Co. as to the expenses of the sale with the auctioneer before the sale, at about one half the rate he could have charged if no bargain had been made. [Objected to.] I know Mr. Wills, the proctor's writing; I have seen him write. These papers are put in the hands of the witness, marked September 28th, 1871, Nos. 4, 6, 7 and 8.] These papers are all in the hand-writing of Mr. Wills, both in body and signature: the letters c.n.s. are put upon each of them. The moneys mentioned in these receipts, which are now put in evidence, were paid partly by myself and partly by Lloyd, Low & Co. I gave the money to Lloyd, Low & Co., and they paid it. These moneys were paid on account of the Admiralty suits on the *Palm Tree*. I received an account from Mr. Wills in connection with the *Palm Tree*. This is it. [The paper or account offered in evidence; objected to, and withdrawn. Mr. Barker puts a paper in the hands of the witness.] I have seen this paper, before I got it from Lloyd, Low & Co. [Mr. Barker offers it in evidence as a freight list of the *Palm Tree*. The Attorney General objects to it. The paper is withdrawn in consequence of the objection. Mr. Barker puts another paper in the hands of the witness, who says]—This has nothing to do with the ship. Q.—Have you credited Mr. Smith in your account with him, not connected in any way with the mortgaged premises, with all moneys received on his account, whether from the *Palm Tree* or from any other source? Ans.—Yes I have. Q.—Has Mr. Smith at any time ever objected to any of the charges in your accounts rendered to him? Ans.—No, never. The only objection I ever heard from him was on reference to the two and one half per cent. commission charged on the five thousand dollars. Q.—Did you ever refuse or direct any one else to refuse to give Mr. Smith any papers in connexion with this vessel in your hands, as belonging to him? Ans.—No, never, directly or indirectly. I do not know much about the repairs done on Smith's building. I was away when part of them was done. I was here when the repairs on the lower part of the building were done. James Robinson, who was examined here as a witness, has been a clerk for D. & T. Vaughan upwards of twenty years. [Mr. Barker puts in the letter written by Henry Vaughan to James Smith, dated Liverpool, 13th June, 1867:]

I have no interest in her, mortgagee was with the Plaintiff now, and never bid upon her of our firm never had a share of the vessel. [The witness, and asks]—Did you pay this account? *Ans.*—I did; the account is marked September 26, No. 6, and is already in evidence. [Mr. Barker puts another paper in the hands of the witness, and asks]—Did you pay this account? *Ans.*—I did pay it. Adjourned until the 14th instant, at ten o'clock, A. M.

On 14th November, 1871, met pursuant to adjournment. Present: Mr. Barker on the part of the plaintiffs, the Attorney General on the part of the defendants.

Adjourned until the 15th instant, at two, P. M.

On 15th November, 1871, met pursuant to adjournment. Present: Mr. Barker and Mr. Forbes on the part of the plaintiffs, the Attorney General on the part of the defendants.

Examination of Henry Vaughan resumed.

Q.—I see by the answer in this suit that Mr. Smith states that on the 20th of the *Palm Tree* by you, under your mortgage, she was bid off by Mr. Smith, conveyed to William Vaughan, is that true? *Ans.*—No; it is not true. *Q.*—I see also by Mr. Smith's answer in this suit that he states that David and Thomas Vaughan caused the ship *Palm Tree* and she was to be arrested on the bottomry bond given to Captain Betts. Is that true? *Ans.*—No; it is not true. *Q.*—I see also that Mr. Smith, in his answer, states that when the vessel arrived in London that D. & T. Vaughan, in breach of the agreement that they had made with him, obtained an injunction out of some Court there to prevent the payment of the freight, was there any such agreement? *Ans.*—No; there was no such agreement?

Cross-examination of Henry Vaughan by the Attorney General.

Q.—You went home to England in 1866—in June, I think—a little before the ship—the *Palm Tree*—left here for England. I was not in England, I think, in 1865. Upon looking at a book, witness says—I went to England on the 20th June, 1865; I left there, I think, the 2d February, 1866, to return home. I went to England in 1867, I think; I left here in February or March, 1867, to go there; and left to come after that from England in April 1868. I went to England in February 1863, and returned in April 1864, and did not go to England again until 1865. *Q.*—Having been able to give the dates of your leaving for England, or returning home from England, or the years you were in England between 1863 and 1868, without reference to books, is not your memory quite defective? *Ans.*—No; I do not think so. *Q.*—The conversations which you have detailed with Mr. Smith with reference to advances for building the vessel must then have taken place previous to February 1863, is not that so? *Ans.*—Yes; a year before; during the year before he was talking about it. Mr. Smith commenced to build the *Palm Tree* in the fall of 1865 or 1866, I think. I do not know what conversations took place between D. & T. Vaughan and Mr. Smith here at the time the arrangements were first made, as I was in England at the time, and the mortgage on the brick building was taken. *Q.*—I see the

mortgage in suit, to which you have referred, is dated 7th June, 1864. How do you reconcile that with your previous statement, when you have before said that you returned from England in April 1864. *Ans.*—I cannot remember exactly about that; the arrangement was made to Mr. Smith have the money while I was in England. Mr. Smith did not state, when he asked for the advance of £2,000, that the ship was to be one thousand tons; that was before the ship was commenced at all. No agreement had been come to to advance money to Mr. Smith before he left for England in 1863. I was in Mr. Smith's yard when he was working at the keel; he had frames out then, I think, and there was timber moulded in the yard. I think I saw the model of the ship up in Mr. Smith's loft. I cannot say that I saw the model when I was first there in Mr. Smith's yard. The model was made before the keel was laid. I could have seen the model when I was first in the yard, if I had desired. Mr. Smith was in the yard when I was first there, whilst the keel was being laid. I do not think I was in the yard three times whilst the keel was being laid. I might have been there twice, or upon the boat looking down into the yard. I don't think I was in the yard more than five times altogether. At the time I was in the yard, when the keel was being laid, I knew how large the ship was going to be: Mr. Thomas Vaughan told me. [The Attorney General does not go into conversations with Thomas Vaughan.] *Q.*—Will you swear that after your return from England in April 1864, Mr. Smith, in your presence, authorized Mr. Thomas Vaughan to contract in England for the sale of a vessel of one thousand tons? *Ans.*—Yes; to the best of my knowledge, I think so; I think I can swear positively that such a conversation took place in D. & C. Vaughan's office; I think Mr. Robinson was present. *Q.*—How long after your return did this conversation take place? *Ans.*—I cannot tell it was not a month; I cannot tell the date when Mr. Thomas Vaughan went home to England that year, without looking at my books. [The witness examines the book and says]—He left here on the thirteenth of April, 1864. I arrived here in 1864 from England, on the third of April, 1864, or about that day; the conversation must have taken place, between my arrival and my brother going away; it took place before he went away. I cannot tell what were to be the dimensions of the 1,000 ton ship; it is very likely her dimensions were talked over, but I cannot say whether they were or not. I cannot say when she was to be delivered to England; it was said that Mr. Smith would commence building her in the fall, and she would be finished in the summer of the following year. It would take Mr. Thomas Vaughan about a fortnight to go to England from Halifax. It would take him some little time to get up this country for sale of a ship; and then it would take a fortnight for the news to get out here. I cannot recollect the time. I was down and saw the keel laid; I cannot swear that the keel was not laid before May, 1864. I think the keel was not laid before my brother Thomas went away; but I am not certain. [The Attorney General hands the witness one of the invoices in evidence, and asks]—Would not the iron referred to in the invoice, marked Sept. 20th, 1871, No. 1., be too large for a ship of one thousand tons? *Ans.*—Yes; I should think it would. *Q.*—Would the metal referred to in invoice, marked Sept. 20, No. 4., be too large for a ship of one thousand tons? *Ans.*—I could not say exactly; some

7th June, 1867, heavier fastenings than others. The orders for this iron went through our hands: we sent them home. We knew if we looked at the orders, that the iron was too large for a ship of one thousand tons. We had a means of knowledge through those orders, that Mr. Smith was sending some for iron for a ship of more than one thousand tons. Mr. Smith might have told me that he got his frame out, moulded in the woods. I do not know that he did so, as I was not there. Q.—Have you not always been under the impression, that Mr. Smith did so get his timber? [objected to.] Ans.—I think he said he was moulding the ship up in the woods. The conversation about building a thousand ton ship, may have taken place before I went to England in 1863, or it may have taken place after I came back; I cannot say. Mr. Smith, afterwards, when he gave the security on the Queen square property, got two thousand pounds; and, then, after he got the five thousand pounds, he asked for enough to finish the ship, and we agreed to give him, as by the agreement appears. I did not understand that the ship was one thousand tons. I did not understand that she was a one thousand tons ship when we advanced the two thousand pounds on the Queen square property. We went into it, and had to go through with it. I was in England in 1867; before Mr. Smith got there. I cannot say exactly how long; I cannot say how long Mr. Smith was in England before he went over to Queenstown; not a great while. I think R. A. Munn, Miller & Co. got the orders for the ship to go to London: they were the agents of D. & T. Vaughan after Miller & Mossman had failed at Liverpool. I cannot say Mr. Smith—when he went to Queenstown—knew the ship was ordered to London. I do not know of my own knowledge, that Mr. Smith then knew that fifty pounds were going to be paid. I cannot tell the date when the ship arrived in London; it was in July, 1867. I think I was in London whilst she was there. I went up from Liverpool with Mr. Smith when she arrived. Q.—Mr. Smith, in his letter to you of the 16th July, 1867, says it will be well for you to give your sanction for these bills, referring to payment of Queenstown bill and the Saint John insurance. Did you give your sanction? Ans.—Yes; I requested Lloyd, Jones & Co., to pay the Queenstown bill. I think Mr. Smith and Captain Betts were in the office when I requested him to do it; but I do not recollect anything about the Saint John insurance. My impression is, that Mr. Smith and Captain Betts were present, but I do not recollect. Q.—Don't you know that the Saint John insurance, which Mr. Smith effected to be paid out of freight, was premium of insurance on freight from Callao to United Kingdom, for £6,000, which Mr. Smith had effected at Saint John, and assigned over to your firm as further security beyond what he was bound to give? Ans.—I do not recollect; and I do not know why we should have required any more security, as we had a mortgage on the ship, and the ship was sufficient to pay it. Q.—Have you such policy in your office now? Ans.—Not to my knowledge; if it is, Mr. Robinson will know, but to the best of my knowledge I never saw such policy. I might have asked Mr. Smith what he meant by the Saint John insurance, but I do not recollect of doing so. Q.—Did not Mr. Smith tell you he thought Samuel Smith's wages ought to be paid? Ans.—Yes, he said so, after the other wages had been paid off; he subsequently received his wages. Q.—Have you the particulars of the item

in Lloyd, Low & Co.'s account put in evidence, marked Sept. 26, 1871, No. 12, namely, July 13, wages to crew, £852 9s. 6d. ? *Ans.*—No. Mr. Smith and Captain Betts were in London when the crew were paid off. They both told me, I think, that they were at the office when the crew were paid off.

Adjourned until 16th instant, at half-past seven, P. M.

NOVEMBER 16th, 1871, 7½ o'clock, P. M.

Met pursuant to adjournment. Present: Mr. Barker and Mr. Fortescue on the part of the plaintiffs. The Attorney General and Mr. Morris on the part of the defendants.

Cross-examination of Henry Vaughan continued.

I am not positive that Mr. Smith told me that he was present at Lloyd, Low & Co.'s when the seamen were paid off; but my impression is, that he told me so at the boarding house where we stopped. Captain Betts stopped at the same boarding house with us. It is not usual for seamen to be paid off at an office—they are usually paid off at the sailors' home, but they go to the office to get their accounts made up. What I understood was, that Captain Betts and Mr. Smith were at the office when the sailors came there for their accounts; but I do not know whether they went to the sailors' home or not. I have seen Lloyd, Low & Co. many a good many times, both of them; I was in their office a good many times. I have seen Mr. Wills write, and have received letters from him. I have not been at his office many times; it was too much expense to go so often. Mr. Smith told me he was at Mr. Wills' office a good many times. I will not swear he said he was there after the middle of August 1867. *Q.*—Did not Mr. Smith inform you about that time that he had been at Wills' office, and that Wills had told him that he would not let him troubling his office, as Mr. Vaughan had stepped in now, and (Smith) was not required now? *Ans.*—He told me something of that kind sometime before Mr. Smith came away from England. *Q.*—Did not Mr. Smith, about the middle of August, 1867, inform you that Captain Betts in Lloyd, Low & Co.'s office, told him that they had received a bundle of letters from Mr. Vaughan and Mr. Miller, and that they could not attend to him. *Ans.*—I don't remember; he might have said so; I do not say he did, nor I don't say he did not. *Q.*—The receipts put in November 9, 1871, marked from 2 to 20, inclusive, and the account of Lloyd, Low & Co., put in evidence, were received by your firm from Lloyd, Low & Co., were they not? *Ans.*—Yes. *Q.*—Why did you not give Mr. Smith copies of such receipts? *Ans.*—He never asked for them. *Q.*—Why did you not give Mr. Smith a copy of the freight list of guano? [Objected to.] *Ans.*—He never asked me for it, or I would have given it to him. *Q.*—Do you know when you got the freight list? [Objected to.] *Ans.*—I cannot tell exactly; I think it was about the time the ship was sold, or just after the ship was sold. *Q.*—Who authorized you to act in the Admiralty suit of Samuel Smith, of which you spoke? *Ans.*—I cannot tell you; I do not think it was Mr. Smith. I paid Mr. Wills money at different times. He gave a bill of costs—pretty long bills. I never paid any money to persons who fitted the ship out for the Palm Tree voyage. I do not know of any of the *Palm Tree's* money;

d Sept. 26, 1857

Ans.—No. The money was paid out of her moneys, so far as the Melbourne voyage was concerned. That bill was compromised at eighty pounds sterling; that was the side of the expenses; I do not know what the expenses were. Q.—Are not the expenses only £14 11s. 0d.? Ans.—I cannot say; Wills' will show. I paid the expenses, whatever they were, and the amount included in Mr. Wills' receipt in evidence. Mr. Wills gave me particulars of all these expenses. I seek to charge those expenses against Smith. I have the accounts of the expenses in my possession. I then. Q.—I suppose you paid the certain amount because he had charged such amount in his bill? [Objected to.] Ans.—They were charged against Mr. Smith's suit, and I paid them. Q.—If you are not from memory to tell whether or not the expenses for the towage were fourteen pounds eleven shillings, look at Wills' bill, and tell me the amount? [Objected to.] Ans.—The bills are in the hands of Mr. Barker. I never examined the bills only when I got them. Q.—Why do you presume to charge against Mr. Smith certain expenses when you cannot state how much such expenses are? Ans.—I cannot remember the expenses are without looking at the bills, and the bills are in the hands of Mr. Barker. Q.—Do you know Roberts, of Liverpool? Ans.—I do not know who composed the firm of James Baines & Co., in which I have heard Roberts was one. Q.—Have you heard that Potter was a member of the firm? Ans.—[Objected to.]—I heard he was. Q.—Have you heard that Mackay was a member of the firm? [Objected to.] Ans.—Yes; I have heard so. Mr. Smith told me that these people were the outfitters of the vessel on the Melbourne voyage. These were people who were claiming against the vessel for the outfits on the Melbourne voyage. I did not receive any of the freight of the *Palm* for the voyage from Liverpool to Melbourne, neither did any of the firm receive any of them. Q.—Who did receive it, then? Ans.—I do not tell. Q.—Don't you know that your firm gave a letter to Baines & Co., that they would not interfere with the *Palm Tree* during her voyage from Liverpool to Melbourne, thence to Callao, and thence back to the United Kingdom? [Objected to.] Ans.—I did not give any, nor did I say. Q.—Don't you know there was such a letter. [Objected to.]—I don't know. I did not see such a letter. I only know what I heard. Q.—What did you hear? [Objected to.] Ans.—[Mr. Barker objects here that there never was such a letter, and insists upon his right to make such statement before the witness answers, so that the witness is not misled.]—Mr. John Miller told me that Peter Miller gave me such a letter, but that he did not know by whose authority it was given. Mr. Barker objects to conversations with John Miller.] The firm of D. Vaughan never gave such a letter? Q.—Will you swear that Thomas Vaughan did not give such a letter? Ans.—I don't think so; I don't know. The accounts of Munn, Miller & Co. were given in Liverpool. Q.—Did not Mr. Smith tell you in London that as Messrs. Mackey, and Potter, who were claiming against the ship for outfits on the Melbourne voyage, were partners of Baines & Co., they were not entitled to payment, as Baines & Co. had received from the Melbourne freight more than enough to pay all bills against the

ship? *Ans.*—I think he did, after the writs had been put upon the ship, after she had been seized by the Admiralty Court. The writ was put upon the ship by Roberts, Mackey, and Potter. Roberts, Mackey, and Potter did not succeed with their suits they put upon her. They paid part of the expenses, and withdrew the suits. Mr. Wills paid the other part of the expenses; I cannot tell you what part of the expenses Mr. Wills had to pay; his accounts will show it. *Q.*—Please tell me from such accounts, or from memory, what was the amount paid by you to Mr. Wills, on account of such suits? *Ans.*—I cannot remember what the amount was, and the accounts are in the hands of Mr. Barker, my counsel. *Q.*—If the sum of four hundred and twenty pounds paid by, or through you, to Wills, as shown by the receipts put in evidence, about how much was on the Roberts & Potter suits? *Ans.*—I cannot say how much Mr. Wills' bills will tell. *Q.*—Why did you not give Mr. Smith copies of Mr. Wills' accounts? *Ans.*—Because he never asked me for them. I had the bottomry bond that Captain Betts took in my possession. Captain Betts gave it to me in London when he and I were there, some little while after the ship arrived in London. I do not know but that Mr. Smith wrote me for it or about it. I cannot say whether he did or not. All the letters that Mr. Smith wrote to me have been put in evidence. I never told Mr. Smith that I had the bottomry. Captain Betts came to England some time in the fall of 1867. Mr. Smith—I cannot say when he left England. I remained in England longer than Mr. Smith. I told him about a fortnight or three weeks before he left England. *Q.*—Why did you not give Mr. Smith notice of the sale of the *Palm Tree*? *Ans.*—Because he never asked me for it. I mean notice of the time and place of the sale of the *Palm Tree*. *Q.*—Did not Smith, when he was about leaving England, ask you for money to pay his board in England and his passage out to this country? *Ans.*—I was down in Cardiff when Mr. Smith left for home. *Q.*—Did not Mr. Smith make such request personally before you left for Cardiff? *Ans.*—I do not recollect. I do not owe Mr. Smith—why should I give him money? *Q.*—Will you swear that Mr. Smith did not make such request, and that you did not refuse to give him the amount? *Ans.*—He might have done so, but I do not recollect. But if he had, I would have not given him the money. *Q.*—Did you not tell Lloyd, Low & Co. to let Smith have no money on account of the *Palm Tree*? *Ans.*—No. *Q.*—Did not Smith come to you that Lloyd, Low & Co. had told him that they had your order not to let Mr. Smith have any money? *Ans.*—No. D. & T. Vaughan gave Captain Betts a power of attorney to act for them at Callao before he left Saint John. [Mr. Barker objects to this.] *Q.*—Did not the power of attorney authorize Captain Betts to act for Messrs. Vaughan in relation to the *Eurydice*, *Sarawak* and *John Parker*, some or all of them? [Objected to.] *Ans.*—I never read the power of attorney. Peter Miller was a member of the firm of Munn, Miller & Co. I think, however, am not positive, but Peter Miller was a member of the firm of Miller, Mossman.

Adjourned until Monday, the 20th November, 1871, at half-past seven o'clock.

MONDAY, 20th inst., 1871, 7½ o'clock.

Met pursuant to adjournment. Present as before. Adjourned until the 24th instant, at half-past seven o'clock, P. M.

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1871, at half-past

st., 1871, 7½ o'clock

ore. Adjourned

FRIDAY, 24th November, 1871, 7½ o'clock.

et pursuant to adjournment. Present as before.

cross-examination of Henry Vaughan resumed.

Mr. Smith must have left England shortly after the last letter put in
me as received from him of the date of August 20th, 1867. I do not

member of Mr. Smith writing to me from Saint John whilst I was in
land, complaining of Captain Betts' letters as being unsatisfactory,

or date of May 7th, 1867. The insurance papers which I speak of as
ing Mr. Smith, were not first received by me in Saint John. I first

them in London. I was not in our office here in Saint John when
the papers were handed to Mr. Smith by Thomas Vaughan. I do not

that Mr. Smith had, previously to this, given Thomas Vaughan a
er of attorney to collect this insurance. Q.—When you in your let-

Mr. Smith of the 19th June, 1867, wrote that you had put a stopper
the freight in Thomson & Bonner's hands, I presume you meant

you had given notice to Thomson & Bonner that you were mortga-
of the ship, and forbid them paying freight to any one else, or some-

to that effect, did you not? [Mr. Barker objects to the question.]

—Yes, by the advice of a lawyer in Liverpool. It was true what I
e. I did put a stopper on the freight. I held the ship mortgage for

firm of D. & T. Vaughan. All the money transactions with Mr.
n were with the firm of D. & T. Vaughan.

cross-examination closed.

Mr. Barker here proves the signature of Mr. Smith to several letters,
y Vaughan says I know Mr. Smith's handwriting. These letters,

ted c. n. s., November 24th, 1871, from No. 1 to No. 13, inclusive.
Mr. Smith's handwriting, and signed by him: the writing on the

of the letters, except the one dated April 10th, 1865, is in the hand-
ing of Thomas Vaughan. [This not objected to.]

re-examination of Henry Vaughan by Mr. Barker now begins.

—Are these the orders you referred to in answer to Mr. King as
g been given for the outfits of the ship? Ans.—Yes, they are;

were brought from England by my brother Thomas when he re-
d from England. [Mr. Barker offers them in evidence. They are

ted to by the Attorney General. They are put in and marked c.
November 24th, 1871, No. 14 to 17 inclusive.] Miller & Mossman

our general agents for shipping purposes, purchasing goods and
al business. Q.—In your cross-examination you state that John

r told you that Peter Miller gave a letter to Baines & Co., that your
would not interfere with the *Palm Tree* during her voyage from

pool to Melbourne, thence to Callao and back to the United King-
Did you ever authorize any such letter to be given? [Objected

Ans.—No, I did not. I was not in England when the vessel was
Baines & Co.'s hands by Mr. Smith. I was on my way here from

and. Mr. Thomas Vaughan was here or on his way to England at
me. I had, at that time I was in England, been there a long time.

as Vaughan was here whilst I was in England. Q.—In answer to
ation put to you by the Attorney General, you stated that Captain

when he went to Callao took a power of attorney from Thomas

Vaughan, or the firm of D. & T. Vaughan. Is this the power of attorney you referred to? *Ans.*—Yes. Questions by the Attorney General. How do you know that this is the power of attorney that was given. [Objected to.] *Ans.*—I was in the office when it was given. [To Mr. Barker.] I only know of one power of attorney being given to Captain Betts. The signature to this is Thomas Vaughan's. The signature on the margin is Captain Betts' signature. [Mr. Barker offers the power of attorney in evidence. It is put in, and marked c.n.s., November 24, 1871, No. 18. Q.—Did you give Lloyd, Low & Co. any orders not to pay Mr. Smith any money. [Objected to.] *Ans.*—No, never. Q.—Did you subsequently remove the stopper from the freight. [Objected to.] *Ans.*—Yes. I put it on before she arrived, at about the date of my letter to Mr. Smith. [Objected to.] I took it off the second day after she arrived. [Objected to.] Q.—Did you ever tell Mr. Smith that you had taken it off. [Objected to.] *Ans.*—Yes. Q.—Did Mr. Smith know before he left England that you had taken the stopper off the freight? [Objected to.] *Ans.*—Yes; he knew it the day I took it off. Thomson & Boner would not advance the money to pay the crew off until I took the stopper off. [Objected to.] Q.—Did Mr. Smith know before you put the stopper on that you intended doing so? [Objected to.] *Ans.*—Yes; I think he knew; I think he was present when it was talked over, but I am not sure. [The letters marked c. n. s., November 24th, 1871, to Thomas Vaughan, and Nos. from 1 to 13 inclusive, are now put in evidence by Mr. Barker; the letters were previously proved this day. The first one is dated 10th May, 1864; the second one is dated 21st June, 1864; the third one is dated 5th July, 1864; the fourth one is dated 20th September, 1864; the fifth is dated the 20th Sept., 1864; the sixth is dated the 10th October, 1864; the seventh is dated the 24th October, 1864; the eighth is an enclosure in No. 7; the ninth is dated the 7th November, 1864; the tenth is dated the 5th December, 1864; the eleventh is dated the 19th December, 1864; the twelfth is dated the 28th January, 1865; the thirteenth is dated the 10th April, 1865.] All these letters are written by James Smith to Thomas Vaughan.

The Attorney General now cross-examines Mr. Vaughan upon the new matter brought out in his re-examination.

Q.—When and where did you tell Mr. Smith that you had taken a stopper off the freight? *Ans.*—I do not recollect whether it was in Lloyd, Low & Co.'s office or in our boarding house, or it might have been on the street. I cannot recollect the exact place. It was about the time I took the stopper off, about the second day after she arrived. I think Captain Betts was present at the time. It was in London. The stopper was taken off by written communication. Q.—Did any process issue out of any Court by you, or at your instance, against the *Palm Tree* or her freight, or against the charters on account of freight? [Objected to generally, but not on account of its being offered at the present stage of the proceedings.] *Ans.*—No, nothing of the kind.

HENRY VAUGHAN.

Adjourned until the 25th instant, at half-past 9 o'clock, A. M.

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25th NOVEMBER, 1871, half-past nine o'clock, A. M.

Met pursuant to adjournment. Present as before.

Silas H. Brown called on the part of the plaintiffs, and being sworn, says:

I live in Saint John. I am a house joiner: have been in the business ten or twelve years. I know the brick house on Prince William street, and extending through to Water street, known as "Smith's building." I have, within the last two years, put repairs upon that building; some of them last year, and some the year before. On Water street I put a floor upon each store; the joists were all rotten, and the floor rotten down to the rock. I put in new floors and new joists. The roof leaked, and was in a very bad state, and I afterwards repaired it. The plastering in the upper room, or big hall, had a portion of it fallen. Michael Flood, a mason, whom I employed, repaired it. These repairs were necessary for the protection of the building. The parapet walls were broken off; as it was cheaper than leading them, and a better job; and the chimneys repaired; the skylight was also repaired; there was painting and glazing done. These repairs were all necessary. I did them for Mr. Vaughan, and he paid me, or Mr. Robinson paid me: Mr. Robinson was Mr. Vaughan's clerk. I purchased the lumber for Mr. Vaughan for the repairs, and he paid for it. I do not know whether it was in my bill or not.

SILAS H. BROWN.

Adjourned until the 29th November, 1871, at four o'clock. Present, &c.

NOVEMBER 29th, 1871.

Met pursuant to adjournment. Present as before.

The Attorney General proposes to call Mr. Smith to rebut the statement of Mr. Vaughan that Mr. Smith told him in London, when they both were there in 1867, that he was present at Lloyd, Low & Co.'s when the crew was paid off; and also to rebut the statement of Mr. Vaughan that he told Mr. Smith in London shortly after the arrival of the vessel in London, that he had taken the stopper off the freight. [Mr. Barker objects to this—first, that the witness, Mr. Vaughan, did not swear positively to either of the statements, and therefore could not be contradicted; second, that the evidence on these points was irrelevant and immaterial, and therefore Mr. Vaughan's statement must be taken as he gave it, the testimony having been brought out on cross-examination; third, Mr. Smith gave in his examination evidence upon both these points.]

Mr. Smith re-called.

Q.—Did you, in London, at your boarding house or elsewhere, when you and Mr. Vaughan were in England, in 1867, or at any time, tell Mr. Henry Vaughan that you were at Lloyd, Low & Co.'s. or at the office, when the crew were paid off? Ans.—[Objected to.]—I never did, for the simple reason that I was never there at the sailors' home, and don't know where the sailors' home is, and I did not see the crew paid off, and Mr. Vaughan never asked me, to my knowledge, about the crew being

VAUGHAN.

A. M.

paid off. [This answer is all objected to.] Q.—Did Mr. Henry Vaughan in Lloyd, Low & Co.'s office, or at your boarding house, or on the street in London, on the second day after the arrival of the vessel, or at any time, tell you that he had taken the stopper off the freight? [Objected to.] Ans.—He never did in London tell me any thing, nor did I ask him. He never told me so at any time or place.

Adjourned until half-past three o'clock, on the 29th November, 1871.

NOVEMBER 29th, 1871.

Met pursuant to adjournment. Present: Mr. Barker on the part of the plaintiff, and Messrs. Morrison and King on the part of the defendants.

Mr. Barker asks the following questions of Mr. Smith:

Q.—When did you first ascertain the crew was paid off? [Objected to.] Ans.—The second or third day after the ship's arrival. Q.—Were you present at Lloyd, Low & Co.'s when the crew got their accounts? [Objected to.] Ans.—I was not. Q.—When did you first hear that the stopper had been taken off the freight? [Objected to.] Ans.—I never heard it until I heard it stated in evidence here. Q.—Then you never knew the stopper had been taken off until you heard it stated in evidence by Mr. Vaughan? Ans.—No; never till then. [Objected to.] Q.—When you, in your answer in this suit, state that Messrs. D. & T. Vaughan obtained an injunction out of some Court in London to prevent the payment of the freight, did you not mean this stopper put on by Mr. Vaughan? [Objected to that it is wandering beyond the matters of the rebuttal, for which he was called.] Ans.—Yes, I think I did mean that I have no doubt but that is what I referred to. Q.—Then if you never knew or heard of the stopper being taken off the freight until Mr. Vaughan gave his testimony here, what do you mean when you state in your answer that the injunction to prevent the payment of the freight was dissolved? [Objected to.] Ans.—I don't think I meant anything more than this. I meant it was put on, and that was all I knew about it. Q.—If you did not mean that by saying the injunction was dissolved that the stopper had been taken off the freight, what did you mean? [Objected to.] Ans.—I could mean nothing else than what I have told you. Q.—Did you not mean by saying that the injunction was dissolved that the stopper had been taken off the freight? [Objected to.] Ans.—I could not mean it, for I did not know it. The crew would be paid by Lloyd, Low & Co. out of the freight. [Objected to.] Q.—How could the crew be paid out of the freight with the stopper on? [Objected to.] Ans.—I cannot tell. I do not know how it was paid. Q.—Did you not in a letter written by you at Saint John, dated April 29th, 1867, addressed to Messrs. D. & T. Vaughan, when speaking of the *Palm Tree's* arrival in England from Callao, write as follows: "My opinion is that it would be best to foreclose your mortgage on her arrival, to clear the ship out of the power of the compact that I have to contend with, and we can manage to make matters right afterwards only get her out of their power." [Objected to.] Ans.—[The Attorney General asks that the witness may see the letter, which is handed to him by Mr. Barker.]—I wrote that. Q.—When you spoke of the compact in this paragraph or extract from the letter that I have just read, did you

Mr. Vaughan
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29th, 1871.
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the defendant

not mean James Baines & Co., and Roberts & Mackey? [Objected to.]
Ans.—I meant them and more than them. The Attorney General asks
Mr. Smith the following questions: *Q.*—Who were Roberts & Mackey?
Ans.—They were part of the firm of James Baines & Co., who received
her outward freight and became answerable for her outfits. I mean by
outward freight the outward freight to Melbourne. *Q.*—Who else did
you mean when you said them and more? *Ans.*—I meant John Miller,
of Munn & Miller, and others. I could not tell who were for me and
who against me. *Q.*—When you wrote the letter last referred to, had
you not every confidence in Mr. Vaughan? [Objected to.] *Ans.*—Yes,
I had.

JAMES SMITH.

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EXHIBITS.

The following are the Exhibits put in evidence in this case :

- No. 1. Bond mentioned in plaintiffs' bill, marked A.
- No. 2. Mortgage mentioned in plaintiffs' bill, marked B.
- No. 3. Probate of Will of Thomas Vaughan, marked C.
- No. 4. Probate of Will of David Vaughan, marked D.
- No. 5. Insurance policy for \$8000 on mortgaged premises, marked c. n. s., April 8th, 1871.
- No. 6. Certified copy of mortgage of *Palm Tree*, for £10,000, from James Smith to Henry Vaughan, marked c.n.s., June 5, 1871.

No. 7.

Saint John, N. B., 15th July, 1866.

JAMES SMITH, Esq.—

Dear Sir—Your esteemed letter of the 14th *via* Portland, came safe to hand, too late to answer *via* Halifax last mail. We hardly know what to say about you fitting out your ship. It will somewhat upset our arrangements. We cannot think of advancing any more money. We have now advanced more than double what we expected. A mortgage on a ship is very poor security, they are liable to so many accidents that cannot be covered with insurance.

However, in consulting Mr. David, we have concluded to let you send her to sea if you can get any person to fit her out for you. You will have to be particular in selecting a good master for her. We find nearly all depends on the master whether the ship makes money or not. We shall write Messrs. Miller & Mossman so insure our claim on her :

The mortgage, . . . \$40,000—£8,333 6s. 8d.
On freight, . . . 8,000— 1,666 13s. 4d.

£10,000 0s. 0d.

We have not heard what is left to our credit on the freight. You will please to understand we only consent for her to go this one voyage.

We hope this will meet your views.

We remain yours truly,

D. & T. VAUGHAN.

[Marked c.n.s. June 6, 1871.]

- No. 8. Bottomry bond on *Palm Tree*, marked c. n. s., dated June 1871.

No. 9.

Liverpool, 19th June, 1867.

JAMES SMITH, Esq.—

My Dear Sir—Your esteemed favour of the 17th was duly received. I note the contents as drawing on Thomson Bonnard for more than you want. I don't think would be worth while. There is no chance for any person to get the freight out of Thomson & Bonnard's hands, as I have

put a stopper on it. They will only pay enough to pay off the Captain and crew and her inward disbursements. Everything is fixed, so that the creditors can get nothing out of the freight.

Captain Betts will be here next mail. Captain Griffiths has given Captain Betts a bottomry on the ship, the same amount as was on her at Melbourne, besides the one on the freight for £4,500, so you see things are pretty safe as regards the creditors here. I think you had better let the Captain draw on Thomson & Bonnard for just what he requires for his disbursement in Queenstown.

You will be sorry to hear that Mr. Thomas Vaughan is very ill. There is no chance of his recovering. Doctor Bayard says his whole system is breaking up. I don't think you will ever see him again in this world. His son David goes home on Saturday. If you go alongside of the steamer in the tender on Sunday afternoon you will see David.

We have not heard of the *Sarawak's* arrival at Valencia, yet she is making a long passage as well as the *Palm Tree*.

I remain yours truly,

HENRY VAUGHAN.

Marked c.n.s. June 7, 1871.]

No. 10. Mortgage from James Smith and Wife to D. & T. Vaughan, of Queen square property, marked c. n. s., July 3, 1871.

No. 11.

James Smith in account with D. & T. Vaughan.

(Interest to 1st July, 1868, at 6 per cent.)

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" 30. " do.	1,000 00	1 61	70 02	
May 10. " do.	2,000 00	1 51	136 76	
" 28. " do.	2,000 00	1 33	130 84	
June 10. " do.	2,000 00	1 20	126 57	
July 27. " do.	5,000 00	388	277 80	
Aug. 13. " do.	2,000 00	321	105 53	
" 18. " do. duty per Eleanor,	30 36	316	1 55	
" 23. " do. " Princess Royal,	156 40	311	7 97	
Sept. 1. " do. freight per Eleanor,	78 40	303	3 88	
" 3. " do. top wharfage,	4 14	301	19	
" 7. " do. per Sea Gem,	1 84	297	9	
" 7. " do. freight per Princess Royal,	92 97	297	4 54	
" 20. " Invoice of sundries, per Eleanor, and Prin- cess Royal, cash 6th July,	3,264 48	359	192 61	
" 20. " do., Sea Gem, " 27th July,	48 14	388	2 66	
" 21. " Cash, freight per Sea Gem,	3 77	283	19	
" 23. " do.,	2,000 00	281	92 38	
" 23. " do., top wharfage,	17			
" 30. " do.,	3 80	274	18	
" 5. " telegraph about treenails to New York, ...	1 70	268	8	
" 6. " Cash,	2,000 00	267	87 73	
" 29. " do.,	4,000 00	244	160 43	
" 31. " 14 bars iron, 3052 lbs., @ 2½c.,	68 67	242	2 70	
" 17. " Cash, freight of treenails,	32 65	225	1 22	
" 18. " Cash,	4,000 00	224	147 28	
" 26. " do.,	1,000 00	216	38 50	

Dec.	1.	To Cash,	\$1,000 00	212	\$84 84	ter is
"	2.	" Invoice of treenails, cash 2d Nov.,	309 80	240	12 28	good c
"	10.	" Cash,	1,000 00	203	33 37	sea abo
"	13.	" do.,	1,000 00	200	32 87	month
"	31.	" Invoice sundries, per Raven, cash Nov. 22,	2,567 52	213	89 87	ten da
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Jany.	7.	" Cash,	2,000 00	174	57 28	the shi
"	14.	" do., duty per Raven,	96 78	167	2 60	Callao
"	25.	" do., top wharfage,	10 68	166	2 00	How i
Feb'y.	3.	" do., freight per Raven,	264 40	149	6 41	He als
"	4.	" do.,	400 00	147	9 40	this ha
"	9.	" do.,	2,000 00	142	46 58	insuran
"	15.	" do., recording mortgage,	5 60	136	1 00	it is no
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March	9.	" do.,	2,000 00	113	37 15	safely t
"	13.	" 80 bars yellow metal,	450 58	109	8 60	all con
"	20.	" Invoice sundries per Kalos, cash 18th Feb.	5,767 44	132	125 12	let eve
April	8.	" Cash,	2,000 00	83	27 28	pretty
"	19.	" do., duty per Kalos,	220 68	72	23 98	chinery
"	26.	" do., freight per Kalos,	205 70	65	2 10	No per
May	6.	" Cash,	2,000 00	55	18 00	misshap
"	9.	" 4 chaldrons coals,	22 00	58	5 00	swamp
"	17.	" Insurance on ship <i>Palm Tree</i> , 20th April, £290 stg.. @ 10 $\frac{1}{2}$ cent.,	1,417 77			deficien
June	13.	" Cash,	2,000 00	18		alone, t
"	24.	" Canvas, per bill,	138 79			so. Re
"	28.	" do.,	80 57			conduct
"	28.	" 75 days' interest on sterling remittances on \$11,647.58,	143 58			out. I
"	28.	" 2 $\frac{1}{2}$ cent. commission on \$40,000,	1,000 00			such aw
July	1.	" balance of interest,	2,521 48			ment.
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			\$68,000 00		\$2,521 48	an injur
1865. Cr.						
July	1.	By Mortgage, dated,	\$20,000 00			well kn
"	1.	" ditto,	8,000 00			but the
"	1.	" ditto, on ship,	40,000 00			ceived
			\$68,000 00			God
1865.						
July	1.	By Balance,	\$639 29			Read

St. John, N. B., 1st July, 1865.

[Marked c.n.s., July 8, 1871.]

No. 12. Bottomry bond on *Palm Tree*, marked c.n.s., August 17, 1871

No. 13.

Saint John, N. B., 5th December, 1866.

CAPTAIN ALBERT BETTS—

Dear Sir—Since your departure letters has been received from the master of the *Palm Tree* and others, in which conflicting statements have been set forth. You know what was telegraphed by Mr. Miller before you left, and was the means of your going to Callao. Mr. Thomas Vaughan has had a letter from Captain Griffith, wishing him to supply means to lift bottomry off the ship *Palm Tree* on three days after her arrival at Callao. This is sharp work, but must be attended to promptly as possible. It is well you have gone, but you cannot possibly be in time to arrange it at three days' sight after her arrival, as this

ter is dated the 28th September, and the ship was all ready for sea in good order on that day, and, as far as we can judge, would proceed to sea about that time. This appears to be wild work to keep a ship two months in Melbourne to repair top work such as we would do here in ten days. The Captain had not even then given the bottomry, although the ship is stated to be ready for sea, and wishes to have means sent to Callao to the amount of £1200, more or less, in the words of the letter. How is any person to judge what really is wanted by such statements. He also writes that he had to pay 50 per cent. for the money. Now, if this has to be added to the £1200, it would make £1800, and other costs, insurance on that amount, &c. As you are prepared to do the needful, it is no use for me to write any more on that head, but I hope nothing more has transpired on the passage to Callao, and that she has arrived safely there. You will act in every way as you judge best for me and all concerned: find the bottom of everything connected with her, and let every person bear his own burthen. I think I have got my part pretty well. It appears to me a screw is loose somewhere in the machinery, which I trust you will find out and have replaced efficiently. No person has any right to offer that is deficient in capabilities. One mishap is plenty in such cases; another on the homeward passage would swamp me. Take no excuse for bad conduct: replace any person that is deficient in performance or in capabilities, as I fully look to you, and you alone, to so act as to acquit yourself, and my confidence is you will do so. Remove any person you have the least suspicion of neglect or misconduct, or incapacity, without favour or affection, and I will bear you out. I wish to run no more risks whatever, and cannot as yet see how such awful misfortune has happened and such poor apparent management. At Melbourne he states he has sold £300 worth of provisions. He states that my son Samuel, in place of being a help to him, has been an injury, and that he is beginning to drink. This may all be, but you well know he never saw such example, nor ever did I see such signs, but the contrary. In this also act as with a stranger. Other letters received state the same about the master. Judge ye.

God bless you with health and strength, body and soul.

Read the Captain's letter and seal it again.

Please ask Samuel candidly all about himself and all the transactions, and I think he will tell the truth for or against.

Meantime, ever yours truly,

JAMES SMITH.

(Marked W., c.n.s.)

No. 14.

St. John, N. B., Dec. 10th, 1866.

CAPTAIN ALBERT BETTS—

Dear Sir—As I have written to you on the fifth, and has little of importance to now write; but having read a letter from Bright Brothers, of Melbourne, and one from the Captain, and also Samuel Smith, I thought I would drop you a few lines, quoting the contents. Messrs. Bright Brothers does not give much satisfaction, only the captain had advertised for money, and no person came forward to advance it, and that they themselves would do so; this was on the 27th of September; and the sum named for repairs, they write me, is over £1,100, and that they would

August 17, 1871

December, 1866.

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Mr. Thomas
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\$2,521 4

try and arrange it for the captain by bottomry to Callao, and they state that I should acquaint Messrs. Gibbs, Bright & Co., in Liverpool, so as to give them authority to draw for the amount, in case an accident should transpire, and recommends me to do so still yet; but there is no need of that now, as you are prepared to do the needful on your arrival or on her arrival, as I do not know when she will sail, as they do not say, nor does the captain say when she will sail, only states that she is ready, and in good order, drawing 13 feet water. It may be some disappointment may occur, and stop her longer, but I trust not, and that she is with you long ago, and that you have all well arranged satisfactorily as I would wish no more misfortune with her. They all speak well of her good qualities. As to the bottomry, you know the way matters in and it is well to see that all is put so that no trouble can arise when she gets home. Will it be well to bottomry her and freight both, to her port of discharge, in the risk, in such a way as to sell public or private sale, may be requisite; so that she will not have to go through a process of law, or waste time; that she may be kept to work by some person, whomsoever may be the purchaser. I need not mention these things, you will do what you think best and safest, as you will hear all about the proceedings at Melbourne. You will act accordingly. But the bottomry must be removed in the way you judge to answer the best purpose you can. You will write when you get through, and let us know how you get on. There is rock salt aft and forward to make pickle; it would be well to put a lot in between the knees and deck, so as to save her from rotting, all the way fore and aft. If there is no large syringe on board, the carpenter could bore a hole in a piece of wood, and make a stick sucker, like hand pumps, that would answer. I hope he will bring a good lot of guano to help out with misfortune. You will also judge the management of her at Melbourne. I have got some queer stories about the ladies aft; how to believe it I don't know. You may find out about it. I hope such explanations will be given as to satisfy you that no bad management has been; and should it be that bad management has been the case, I would reprove it in any way you may deem most efficient, no matter what way that may be. I hope all the papers about the insurance is right, as this would be bad if I should lose it on such a splendid ship as she is, and so much money in her, and paying such high insurance on her; but all these things, I suppose, is done before you get there, and not likely be able to amend them. In the meantime, make the best of all, so that you may avoid all the trouble you can when she gets home, as you know people acting as they have has little conscience in money matters especially. I seen your brother; he told me all yours was well, as this leaves me, and I hope you are enjoying the same blessing. Give Samuel Smith an overhauling closely, as some complaints has reached me about him—no favour, son or no son, only what is right. Make the bottomry a large sum on ship and freight.

Yours, truly,

JAMES SMITH.

[Marked M1, c.w.s.]

No. 15.

St. John, N. B., January 9th, 1867.

CAPTAIN ALBERT BETTS—

Dear Sir—Your much esteemed favour of the 9th January is duly received—contents duly noted. The *Palm Tree* had commenced loading,

and they state that she will get off sooner than her lay days would restrict her, and that she will take a good lot of it, as it will all be wanted to square accounts, as you know. I am pleased to see that you have got matters arranged so well as you have; and here I would observe, from all I can learn, and for the good of all concerned, you had better go home in her, taking all into account, the season of the year; you will be likely to have a good time home, and you will be better pleased yourself to see the last of it, and you most likely will be required in Liverpool. I hope to be there if well. As to the insurance papers, Mr. Miller has got them, and has applied to Baines & Co. for the policies. It appears the broker has the policies and will not give them up, stating that Baines owes him, and accordingly he wants the collection of the money, and wants to appropriate it to defraying expenses of insurance of Baines, not only the *Palm Tree*, but all Baines' bills *in toto* as far as it goes; but I have given orders to Mr. Henry Vaughan (that goes by Monday's mail, the 11th instant), to exact the policies from the broker, and if he refuses to give them to be he is paid, to come responsible for the *Palm Tree's* premium, if Baines has not paid it, and if he refuses to give up the policies, then to take legal steps for recovery of them. It appears from Captain Griffiths' letter he has taken his casks to Callao. It is strange that he should do this: he should sold his casks at Melbourne. This you will see about, and also that he sold his provisions and now has to purchase more. You of course will make the best of all this. Samuel has written me I think sparingly about the Captain, not wishing, it would appear, to say much; but you will act as best you may have occasion to do. I think Samuel is rather a hard time of it amongst the Welch people. You will put all this right. I am pleased to hear the account you give of Samuel. I hope all will be well with him yet; he will be, I trust, guided by your counsel. Please talk with him and show him his duty in every way, and I have faith in him that he will pay attention to your counsel; you know that he was tenderly and as respectably raised as I was capable of being, and he may think it hard to be ever compelled to do his duty; but should more than his duty be exacted, that would not be right. He has to earn his bread now in a way, as you know, was not expected he would only a very short time ago: but he may ultimately lose nothing by my misfortune. When people earn their own living, they know better how to take care of it.

How came Captain Griffiths to lay in Melbourne a month after he was ready for sea, and crew by him? Had proper means been used he surely got plenty to advance on bottomry on a ship like that—so small a sum. This appears strange to me, and it appears paying £4 a month for his new crew. This will tell up awfully. A screw must be loose in some way, but where is the remedy now? I hope no time will be lost in reporting the ship to Liverpool on her arrival home, in order that you may be seen, and consult the best method of arranging all matters connected with her. I have written Samuel—please hand it to him.

[Marked L1, c.w.a.]

ES SMITH.

January 9th, 1867.

January is duly commenced loading,

Chincha Islands, January 9th, 1867.

To JAMES SMITH, Esquire, Saint John, N. B.

I arrived at this place two days after the *Palm Tree*; and on visiting the ship, found her in excellent order, and everything going on well on board. Captain Griffiths informed me he has sent all his vouchers to you, directed to Mr. Vaughan, at Liverpool, and consequently I can give you very little information about them. I have seen the copy of his protest, which is very strong, and I can see no reason why you cannot recover all the expenses of repairs, as well as bottomry interest, and all expenses connected therewith. The ship has been dismasted by encountering extraordinary stormy weather. It was the intention of Mr. Brice to charge 4 per cent. for lifting the bottomry, if I had not come here. The ship is getting along very well, and I hope will give a good account of herself at the end of the voyage. Your son is in good health and spirits, and will write you by this mail. The captain having sold all his surplus stores at Melbourne, finds himself now short for the homeward voyage, and will have to buy. It will be very well if I do not have trouble with him yet. I remain, dear sir, yours truly,

ALBERT BETTS.

DEAR SIR—

Since writing the within, your two letters, of 14th December, has been duly received, and contents noted. I find nothing wrong about your son. I have asked him about the reports in your letter, and also the captain. I think it is all nonsense. Your son is young, and I see nothing that any sensible man would take notice of. He is, I think, as steady or steadier than the most of young men now-a-day. Give yourself no alarm about him, for he is all right. The ship is taking in cargo slowly—having now on board 180 tons. Your interest will be carefully looked after.

I remain, yours truly,

ALBERT BETTS.

[Marked c.n.s., August 18, 1871.]

No. 17.

Queenstown, 1st July, 1867.

CAPTAIN ALBERT BETTS—

Dear Sir.—I received your kind favour of the 29th, and was pleased to hear from you. I felt disappointed at not seeing you on board; but the time only being about 15 minutes, that it give no time, as it was in the night.

I observe the contents of your letter, and no doubt but all was done and will be for the best. I have no other wish but that right should take place to all concerned. Business matters is better discussed than written, therefore when we meet, which I trust will be soon, all will prove to be quite in keeping with the emergency of the matter concerned. I observe that Mr. Miller thinks well of what is done, and Mr. V., no doubt, will approve. As to the Captain, I fully intend to treat him in every way civilly and straightforward, and will kindle no fires, add to or interfere with the interest of all. It is well for you to stand on the ground you have taken. I feel satisfied you have done what is right, as far as circumstances would admit. No word of the ship yet. This three weeks the wind has been east, or no wind at all; it is now east, after a rainy

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night. As soon as I give her her orders I will lose no time in seeing you in Liverpool.

I hope Mr. H. Vaughan is quite recovered. I trust he will have no sickness here; it is bad enough to be from home without any more trouble.

Yours truly,

JAMES SMITH.

[Marked K1, c.n.s.]

No. 18.

London, 24th August, 1867.

CAPTAIN ALBERT BETTS.—

Dear Sir—In settling with Captain Griffiths, I found that you had, by way of mistake, taken the final settlement at Callao, containing the Melbourne account. I have put off the settlement to I get it sent up. You recollect you took it from among the other bills of Melbourne to make up the account that evening. Please send it by way of first post and oblige. I will be less troubled with his settlement than I thought, and if I had that account there is much in it that he will acknowledge and refund, as matters now stand. Nothing done with the ship yet.

Yours truly,

JAMES SMITH.

[Marked H1, c.n.s.]

[No. 19.]

Callao, December 21,

JAMES SMITH, Esquire, Saint John, N. B.

Sir—I arrived at this port on the eighteenth, and found the ship *Palm Tree* detained here for funds. I sent her to sea the day after I arrived here. I found the bond in the hands of Wm. Gibbs & Co., of Lima, and who has endeavored to collect the last farthing. I now have the bond in my possession, endorsed over to myself. The bond was for eighteen hundred and seven pounds seven shillings and one penny sterling, with fifty-five pounds per cent. Bottomry interest amounted in round numbers to twenty-eight hundred and one pounds seven shillings and eleven pence, which sum I had to pay at the current rate of exchange. Capt. Griffiths says he sold the surplus stores at Melbourne for the purpose of reducing the amount of bottomry. I will, however, follow the ship to Chincha, and endeavor to give you more information by next mail. As far as I can see Capt. Griffiths is steady; but I think when you say that you say all. As to his honesty, I will know more about that when I see his acts at the Islands. To turn him out here would be very expensive, except through drunkenness, and he having now done all the damage he can well do on the present voyage. I have thought it best to let him make the voyage unless something more turns up.

I remain your obedient servant,

ALBERT BETTS.

Amount drawn from Guano Company on account freight:—

£3,500 sterling at 43,—\$19,534 38

Amount of bottomry and int'rst, 2,801 7s. 11d. at 36½,—18,419 63

Balance of amount drawn, \$1,114 75

[Marked c.n.s. Aug. 18, 1871.]

[No. 20.]

*Chincha Islands, Feb. 21, 1867.***JAMES SMITH, Esq., Saint John N. B.—**

Dear Sir—The *Palm Tree* will be ready to leave this place on the 27th or 28th of this month, we having bot. time, that is to say every day saved from lay days. We are to pay to the Peruvian contractors thirty seven Peruvian dollars—her daily expenses amounts to about this sum and would have to be paid on arrival at her destination, as it would be mostly seamen's wages and provisions. Everything is seemingly going on well on board the ship in very good order, and I thought it well to hurry her home on account of her class running off, for if you intend to sell, the length of class will be a great object. She is now drawing 2 feet 4 inches fore and aft, and is the finest looking ship here—remarked by everybody.

I remain yours truly,

ALBERT BETTS.

[Marked C.N.S. Aug. 18, 1871.]

[No. 21.]

*Callao, March 13th, 1867.***JAMES SMITH, Esq., Saint John, N. B.—**

Dear Sir.—Your letter of February 9 came safe to hand, and contents duly noted. The ship had sailed the day before I received it. She left this port on the ninth, about 4 inches deeper than the surveyor's mark drawing 20 feet 10 inches, even keel. I enclose a bill of exchange of G. W. Roberts for a fore-yard supplied for ship *Arracana*, and also topmast for same ship from the *Palm Tree*. I have taken a bottomry of the freight, ship, tackle and apparel; for the bottomry I have taken upon her on account of Underwriters at fifty per cent. bottomry premium; after advertising, no person being found to offer funds I have supplied them myself.

I remain yours truly,

ALBERT BETTS.

[Marked C.N.S. Aug. 18, 1871.]

No. 22. Agreement between James Smith and D. & T. Vaughan
marked A., C. N. S.

No. 23. Mortgage of *Palm Tree*: James Smith to Henry Vaughan
marked D., C. N. S.

[No. 24.]

\$2,000.

Saint John, N. B., 28th January, 1864.

Received from D. & T. Vaughan, two thousand dollars on account

JAMES SMITH.

[Marked B2, C.N.S.]

[No. 25.]

\$1,000.

Saint John, N. B., 31st March, 1864.

Received from D. & T. Vaughan, one thousand dollars on account

JAMES SMITH.

[Marked C3, C.N.S.]

[No. 26.]

\$1,000.

Saint John, N. B., 21st April, 1864.

Received from D. & T. Vaughan, one thousand dollars on account

JAMES SMITH.

[Marked D2, C.N.S.]

No. 27.

1,000.

Saint John, N. B., 30th April, 1864.

Received from D. & T. Vaughan, one thousand dollars on account.

JAMES SMITH.

Marked E2, C.N.S.]

No. 28.

Saint John, N. B., May 10th, 1864.

Messrs. D. & T. Vaughan will please give the bearer, Robert Smith, two thousand dollars, and oblige.

Yours, truly,

JAMES SMITH.

2,000.

Saint John, N. B., 10th May, 1864.

Received from D. & T. Vaughan, two thousand dollars on account.

JAMES SMITH, per ROBERT SMITH.

Marked F2, C.N.S.]

No. 29.

Saint John, N. B., 28th May, 1864.

Received from D. & T. Vaughan two thousand dollars on account.

JAMES SMITH.

Marked J2, C.N.S.]

No. 30.

Saint John, N. B., 9th June, 1864.

To the Cashier of the Bank of New Brunswick:

Pay to James Smith, or bearer, two thousand dollars.

D. & T. VAUGHAN.

Marked C.N.S., Sept. 19th, 1871.]

No. 31.

Saint John, N. B., 27th July, 1864.

Received from D. & T. Vaughan five thousand dollars on account.

JAMES SMITH.

Marked I2, C.N.S.]

No. 32.

Messrs. D. & T. VAUGHAN—

Gentlemen—Please let my son Robert have two thousand dollars (\$2000), and oblige yours &c.

Saint John, N. B., 9th June, 1864.

Marked A2, C.N.S.]

No. 33.

St. John, N. B., 13th August, 1864.

Received from D. & T. Vaughan, two thousand dollars on account.

JAMES SMITH, pr ROBERT SMITH.

Marked W2, C.N.S.]

No. 34.

St. John, N. B., 23d September, 1864.

Received from D. & T. Vaughan, two thousand dollars on account.

JAMES SMITH, pr ROBERT SMITH.

Marked O2, C.N.S.]

No. 35.

St. John, N. B., Sept. 23d, 1864.

Messrs. D. & T. Vaughan will please give the bearer, Robert Smith, two thousand dollars, and charge it to the account of yours truly,

JAMES SMITH.

Marked X1, C.N.S.]

No. 36.

\$2000 *St. John, N. B., 6th October, 1864.*
Received from D. & T. Vaughan, two thousand dollars on account.
JAMES SMITH.

[Marked G2, C.N.S.]

No. 37.

\$4,000. *Saint John, N. B., 29th October, 1864.*
Received from D. & T. Vaughan, four thousand dollars on account.
JAMES SMITH.

[Marked H3, C.N.S.]

No. 38.

\$4,000. *St. John, N. B. 18th November, 1864.*
Received from D. & T. Vaughan, four thousand dollars on account.
JAMES SMITH.

[Marked K3, C.N.S.]

No. 39.

\$1,000. *St. John, N. B., 26th November, 1864.*
Received from D. & T. Vaughan, one thousand dollars on account.
JAMES SMITH, pr ROBERT SMITH.

[Marked S2, C.N.S.]

No. 40.

\$1000. *St. John, N. B., 1st Decr., 1864.*
Received from D. & T. Vaughan, one thousand dollars on account.
JAMES SMITH, pr ROBT. SMITH.

[Marked R2, C.N.S.]

Nor 41.

\$2000. *St. John, N. B., Novr. 26th, 1864.*
Messrs. D. & T. Vaughan—Please pay the bearer, Robert Smith, two
thousand dollars, and oblige yours truly, JAMES SMITH.
(\$1,000 paid on within 26th Novr., 1864; \$1000 paid 1st Decr., 1864.)

[Marked Z1, C.N.S.]

No. 42.

\$1,000. *St. John, N. B., 10th December, 1864.*
Received from D. & T. Vaughan, one thousand dollars on account.
JAMES SMITH, pr R. SMITH.

[Marked Q2, C.N.S.]

No. 43.

\$1,000. *St. John, N. B., 13th December, 1864.*
Received from D. & T. Vaughan, one thousand dollars on account.
JAMES SMITH, pr ROBERT SMITH.

[Marked P2, C.N.S.]

No. 44.

St. John, N. B., December 10th, 1864.
Messrs. D. & T. Vaughan will please give the bearer, Robert Smith,
two thousand dollars, and charge the same to account of, yours truly,
JAMES SMITH.

[Marked Y1, C.N.S.]

No. 45.

\$2,000. *St. John, N. B., 7th January, 1865.*
Received from D. & T. Vaughan, two thousand dollars on account.
JAMES SMITH, pr ROBERT SMITH.

[Marked T3, C.N.S.]

No. 46.

St. John, N. B., January 7, 1865.

Messrs. D. & T. Vaughan—Will please give the bearer, Robert Smith, two thousand dollars, and charge the same to account of yours truly,
JAMES SMITH.

[Marked W1, c.n.s.]

No. 47.

St. John, N. B., 4th July, 1864.

No. 104.

To the Cashier of the Bank of New Brunswick.

Pay to James Smith or bearer, four hundred dollars.
\$400.

D. & T. VAUGHAN.

[Marked c.n.s., Sept. 12, 1871.]

No. 48.

St. John, N. B. Feby. 4th, 1865.

Messrs. D. & T. Vaughan will oblige me by giving me four hundred dollars to-day.

JAMES SMITH.

(Received the within this 4th Feby., 1865.—JAMES SMITH, pr ROBT. SMITH.)

[Marked V1, c.n.s.]

No. 49.

MESSRS. D. & T. VAUGHAN—

Gentlemen—Please let the bearer, Robert Smith, have two thousand dollars, and oblige

JAMES SMITH.

Saint John, N. B., February 3th, 1865.

(Received the within amount this 9th February, 1865, James Smith, per Robert Smith.)

[Marked U1, c.n.s.]

No. 50.

No. 106.

St. John, N. B., 24th February, 1865.

To the Cashier of the Bank of New Brunswick:

Pay to James Smith, or bearer, two thousand dollars.
\$2,000.

D. & T. VAUGHAN.

[Marked c.n.s., September 19, 1871, No. 3.]

No. 51.

Messrs. D. & T. Vaughan—Gentlemen: Please let the bearer, Robert Smith, have two thousand dollars, and oblige,

Yours &c. &c.

JAMES SMITH.

St. John, N. B., March 9, 1865.

(Received the within this 9th March, 1865.—JAMES SMITH, pr ROBERT SMITH.)

[Marked T1, c.n.s.]

No. 52.

Messrs. D. & T. Vaughan—Please let the bearer, Robert Smith, have two thousand dollars, and oblige, yours, &c. &c.,

JAMES SMITH.

St. John, N. B., 8th March, 1865.

(Received the within amount this 8th April, 1865.—JAMES SMITH, pr ROBT. SMITH.)

[Marked S1, c.n.s.]

No. 53.

\$2,000.

St. John, N. B., 6th May, 1865.

Received from D. & T. Vaughan two thousand dollars on account.

JAMES SMITH, pr R. SMITH.

[Marked U2, c.n.s.]

No. 54.

St. John, N. B., 8th May, 1865.

Messrs. D. & T. Vaughan will please give the bearer, R. Smith, two thousand dollars, and oblige, yours truly,

JAMES SMITH.

[Marked R1, C.N.S.]

No. 55.

St. John, N. B., 13th June, 1865.

\$2,000.

Received from D. & T. Vaughan, two thousand dollars on account, per order.

JAMES SMITH, pr ROBERT SMITH.

[Marked V2, C.N.S.]

No. 56.

St. John, N. B., June the 13th, 1865.

\$2,000.

Messrs. D. & T. Vaughan will please give to the bearer, Robert Smith two thousand dollars, and charge the same to the account of, yours truly,

JAMES SMITH.

[Marked P1, C.N.S.]

No. 57.

St. John, N. B., 8th July, 1865.

\$150.

Received from D. & T. Vaughan one hundred and fifty dollars on account.

JAMES SMITH, per ROBT. SMITH.

[Marked L2, C.N.S.]

No. 58.

Messrs. D. & T. Vaughan—Gentlemen: Please let the bearer, Robert Smith, have the sum of one hundred and fifty dollars, and oblige
Yours &c.

JAMES SMITH.

St. John, N. B., 8th July, 1865.

(Received the within this 8th July, 1865—JAMES SMITH, pr ROBERT SMITH.)

[Marked O1, C.N.S.]

No. 59.

St. John, N. B., 17th July, 1865.

\$489.29.

Received from D. & T. Vaughan four hundred and eighty-nine dollars and twenty-nine cents, on account.

JAMES SMITH.

[Marked X2, C.N.S.]

No. 60.

St. John, N. B., July 14th, 1865.

Messrs. D. & T. Vaughan will please give the bearer, R. Smith, whose money is convenient to-day—to-morrow will do for the balance, and oblige, yours truly,

JAMES SMITH.

(Received two thousand dollars on this order this 15th July, 1865—JAMES SMITH pr ROBT. SMITH.)

[Marked Q1, C.N.S.]

No. 61.

St. John, N. B., 15th July, 1865.

\$2,000.

Received from D. & T. Vaughan, two thousand dollars on new account.

JAMES SMITH, pr ROBERT SMITH.

[Marked N2, C.N.S.]

th May, 1865.
R. Smith, tw

6,000.

Received from D. & T. Vaughan, six thousand dollars on account.
JAMES SMITH, pr ROBT. SMITH.

ES SMITH.

[Marked M2, c.n.s.]

No. 63.

St. John, N. B., 17th July, 1865.

th June, 1865.
on account,

Messrs. D. & T. Vaughan will please give the bearer, R. Smith, six thousand two hundred dollars, and charge the same to my account, and oblige, yours truly,

ROBERT SMITH.

JAMES SMITH.

(Received on the within order, six thousand dollars, this 17th July, 1865—JAMES SMITH, pr ROBT. SMITH.)

[Marked N1, c.n.s.]

th 13th, 1865.
Robert Smith

Commercial Buildings, 17 Water street, Liverpool, 28th May, 1864.
Messrs. A. Gibson & Co., Liverpool.

ES SMITH.

No. 64.

Bought of Fallows, Stitt & Co.,

Successors to the late firm of Stitt Bros. & Co.,

Iron, Tin-Plate, and General Metal Merchants.

th July, 1865.
y dollars on a

Bars.	Particulars.	Tons.	Cwt.	Qrs.	Lbs.
222	Welsh iron, round,	1	10	2	24,
289	"	3	1	2	8,
44	"	2	3		24,
112	"	1	2	1	24,
160	"	1	4	1	8,
209	"	1	6	10	2
41	"	1	10		18,

bearer, Robe
oblige

ES SMITH.

1177 bars. 20 14 3 14 at £7 15s.—£160 15s. 4d.

F. o. b. here per *Eleanor*, at St. John, N. B.

BERT SMITH.)

Discount, 3 per cent. Terms—cash, less \$3.70 discount. Fallows, Stitt & Co., pass Customs entry.

[Marked c.n.s., September 19, 1871, No. 4.]

th July, 1865.
ty-nine dolla

(Duplicate.) 19, Brunswick street, Liverpool, 27th July, 1864.
Messrs. Miller & Mossman—

ES SMITH.

Bought of Hunter & McArthur,

Late N. & H. Cox & Co.

Iron, Steel, and Tin Plate Merchants.

ly 14th, 1865.
Smith, wha

Bars.		Owt.	Qrs.
V 3	best refined iron, 10 1-2 x 7-8,	11	2
2	do. do. 8 x 3-4,	5	2

Per *Sea Gem*. We pass entry.

[Marked c.n.s. S. pt. 17th, 1871, No. 5.]

ES SMITH.

5—JAMES SMITH

No. 66.

(Duplicate.)

Messrs. Miller & Mossman—

Liverpool, June 1864.

th July, 1865.
a new account

Bot. of the Mersey Steel and Iron Co.
64 bars best iron 5 1-2 x 7-8, 145 2 26, at 9s. 6d., — £69 4s. 6d.

BERT SMITH.

Per *Princess Royal*.

[Marked c.n.s. September 20, 1871, No. 1.]

No. 67.

Commercial Buildings, 17 Water Street, Liverpool, 4th July, 1864.

Messrs. A. Gibson & Co., Liverpool,

Bought of Fallows, Stitt & Co.

Successors to the late Firm of Stitt, Bros. & Co.

Iron Plate and General Metal Merchants.

[Order 26th May, Campbell.]

20 bags deck spike Nails, 6 inch,	1 ton,	13s. 11d.—£13 18 4
20 " " " 7 "	"	13s. 8d.— 13 13 4
20 " " " 8 "	"	} 13s. 8d.— 80 10 0
20 " " " 9 "	"	
40 " " " 10 "	"	
40 " " " 12 "	"	

Cr. 160 bags.

8 tons.

£108 1 8

Discount—less 2 per cent.,

2 14 1

F.o.b. head, per "Princess Royal, at St. John. N. B.

£105 7 7

Terms—cash, less 2 1-2 per cent.—F. S. & Co. pass customs entry.

[Marked c.n.s., Sept. 20, 1871, No. 2.]

No. 68.

Liverpool, 6th July, 1864.

Messrs. A. Gibson & Co.

To Fallows, Stitt & Co., Dr.

May 28. To goods per invoice,

£160 15s. 4d.

3 per cent.,

4 16 5

£155 18s. 11d.

July 4. " " "

£108 1s. 8d.

2 1-2 per cent.,

2 14 1

105 7 8

£261 6s. 6d.

Settled 6th July, 1864,

Entd. 21st July 1864, J. R.

[Marked c.n.s., Sept. 20, 1871, No. 3.]

FALLOWS, STITT & Co.,
pr Alex. Lenam.

No. 69.

Mr. Vaughan

(Shipped per *Princess Royal* to St. John, 4th July, 1864.)

Bought of Munt's Metal Company Limited.

Charles Moss & Co., Sole Agents for Liverpool.

(Duplicate.)

Spot of white paint on each end of rods.

June 29.	43 p.m. rods, 1 inch,	15	20		
	187 " " 7-8	44	1	4	
July 2.	8 " " "	2	16	61	2 12 8 1-2
[V]					
June 29.	1 1 casks butt bolts, 13x7-8, 5				
	2 1 " " "				
	3 1 " " "				
	4 1 " " "				
	4 casks, 5s.	20			
					100 6 8
					1
					£345 14s. 2d.

5 per cent. discount for cash in 14 days.

[Marked c.n.s., Sept. 20, 1871, No. 4.]

No. 70.

July, 1864.

& Co.
Broas & Co.
l Merchants.

13 18 4
13 13 4

08 10 0
2 14 1

08 1 8
2 14 1

5 7 7
try.

Invoice of Goods on board the British schooner "H. C. Brooks," Faulkner, Master, of St. John, N. B., by order and for account and risk of Messrs. D. & T. Vaughan there.

2055 square treenails, 26 in. x 1 1/2, a \$117.40, . \$241.20
2030 do. do. 32 " x 1 1/2, a 190.80, . 387.32

\$628 58

CHARGES.

Cartage \$16; bills of L., stamps &c. and clearance, \$19.00

Commission 4 per cent. on \$647.58, . 25.90— 44.90

CR.

\$673.48

Nov. 2. By amount transferred to Dbt. of Messrs. D. & T. Vaughan, as cash this date, . \$673.48

E. & O. E.

New York, 2d November, 1864.

EDMISTON BROTHERS.

[Marked c.w.s., Sept. 1, 1871.]

No. 71.

July, 1864.

Dr.

(Duplicate.)

85 Harrington St., Toxteth Park, Liverpool, 29th November, 1864.

Messrs. Miller & Mossman, per Thos. Vaughan,

Bought of the Mersey Steel and Iron Company.

Order dated 18th November.

Knee Iron.

55 18s. 11d.

05 7 8

61 6s. 6d.

& Co.,
x. Lenam.

68 bars 5x3 1-2, abt. 12.2,	424 1 14		
12 " 11.9,	71 2 7		
12 " 11.3,	68 24		
12 " 10.9,	65 1 2		
12 " 10.3,	62 3 1		
4 " 9.9,	19 3 14	712 6	8s. 6d. £302 12s. 5d.

60 taper bars, 5 in. wide, 4.0,	84 2 12		
62 " 4 1-2 " 3.4,	105 2 5		
62 " 4.0,	77 1 22	267 2 11	10s. 6d. 140 9 9

304 bars, £443 2s. 2d.

Per Raven.

[Marked c.w.s., September 8, No. 6.]

(.)
Limited.

No. 72.

£244 7s. 6d.

(Duplicate.)

19, Brunswick Street, Liverpool, 29th November, 1864.

Messrs. Miller & Mossman.

Bought of Hunter & McArthur,

Late N. & H. Cox & Co.,

Iron, Steel, and Tin Plate Merchants.

Ordered 24th November.

Bars.	Tons.	Cwt.	Qrs.	Lbs.	
(V) 45 best refd. iron, 3 3-4x3-8,	1	9	1		
23 do. do. 3 1-2x "		14	2	18	
68	2	8	3	18	9 of. £19 15s. 3d.

100 6 8
1

345 14s. 2d.

Per Raven.

[Marked c.w.s., September 20, 1871, No. 7.]

£18 10s. 6d.

No. 73.

Messrs. D. & T. Vaughan, Dr.

		To Messrs. Miller & Mossman.		T. c.	
To charges on oakum,	£48			2	
" " 304 iron knee bars,	443 2s. 2d.			48 19 2 17	
" " 68 bars iron,	19 15 3			2 3 3 18	
		£510 17s. 5d.		53 2 2 7	
Shipped per <i>Raven</i> , for St. John, N. B.					
Dock and Sawm dues and Entry,	£2 14s. ;	Bills Lading,	1s. 6d.	£2 15s. 6d.	
Prem. insurance on £620, at 70 per cent.,	£21 14s.				
Policy,	1 8s.—			23 2s. 0d.	
				£25 17s. 6d.	

Liverpool, 9th December, 1864, Miller & Mossman, per Wm. Simpson.
 [Marked c.n.s., September 20, 1871, No. 8.]

No. 74.

(Duplicate.)

72 & 61 *Bridgewater St.*, and 46 *Dale St.*, *Liverpool*, Nov. 29th, 1864.
 Mr. Vaughan, pr Messrs. Miller & Mossman,
 Bought of Graham & McArdle,
 Cotton Dealers.

To ship *Raven*.

(V) 40 cwt. Brown Oakum, at 24s. nett cash, - - £48 0s. 0d.
 [Marked c.n.s., September 20, 1871, No. 9.]

No. 75.

(Duplicate.)

Liverpool, 15th February, 1865.

Messrs. D. & T. Vaughan,

To Alexander & Lott, Dr.

1-72 73 = pegs. rope and 1 truss canvas ; 200-213 = coils wire rope, and
 1 truss jib hanks ; 100-145 coils manilla rope. per *Kalos*, for St. Johns, N. B.
 Invoice of cordage bought by Messrs. D. & T. Vaughan,
 Amounting to £547 7s. 2d.

[Marked c.n.s., September 20, 1871, No. 10.]

No. 76.

(Duplicate.)

Dudley, 22d February, 1865.

Messrs. D. & T. Vaughan,

To Tinsley, Wright & Co., pr Alexander & Lott.

Per invoice of anchors and chains, - - - £343 19s. 6d.
 Per *Kalos*, for St. John, N. B.

[Marked c.n.s., September 20, 1871, No. 11.]

No. 77.

(Duplicate.)

Liverpool, 15th February, 1865.

Messrs. D. & T. Vaughan,

To the Edinburgh Roperie Sailcloth Co.,
 Cordage and Sailcloth Manufacturers,
 per Alexander & Lott, Agents,

Invoice of canvas, &c., per *Kalos*, for St. John, N. B., £280 16s. 9d.
 [Marked c.n.s., September 20, 1871, No. 12.]

Thos. V.
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Liverpool, 6th August, 1865.

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2 2 7

£2 15s. 6d.

23 2s. 0d.

£25 17s. 6d.

Simpson.

. 29th, 1864.

Ardle,

£48 0s. 0d.

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tt, Dr.
ire rope, and
Johns, N. B.

£547 7s. 2d.

uary, 1865.

& Lott.
£343 19s. 6d.

uary, 1865.

Co.,
turers,
Agents,
£280 16s. 9d.

THOS. VAUGHAN, Esquire:

Dear Sir—This is to inform you of my arrival here, in the enjoyment of good health, and I trust you and yours is enjoying the same blessings. My good friend Henry is with me, at 53 Rodney, and I am taking as good care of him as I can.

The *Palm Tree* is here all right, in a little over 20 days. The captain gives her a good name. She works well, and sails well, and is tight. This is quite satisfactory. She is in the river, as the tides are low. She will get into the dock on Monday. Business is dull for ships at present. The opinions is conflicting; some thinks that business will improve; some is doubtful; but by the time she gets out, a better state of affairs may be hoped for. Coals from Cardiff, 26, to Callao, and 65 back for guano. I have seen a party or two in the Australian trade; they think that the ship would be a splendid ship for that trade; and should she not sell, would make me an offer for her out; and it might be, one of them may make an offer to purchase; but it is too soon to form any opinion about her yet. Mr. P. Miller has entered her, and Mr. John Miller is in London, and when he comes back will see him as to commissions, &c. I hear some complaints about him undervaluing ships under what the market would even suggest. Bad and all as it is, but I think he will do what he can for me, and I will try and do what I can for myself. I have not had time to see many of my old friends yet, but will soon. Two of them is from home, and I have some hopes both would purchase. I seen one of their sons; he told me that it was quite probable his father would purchase. There is three of my build here now, and they are and have been doing well; over 14 years old; delivering Calcutta cargo as well as any ship can do; 93 days passage; and looks as good as ever; so far as shape goes, none excepted. I need not weary you with very long epistle, as I have little to interest you with at present. Please, give my compliments to Mr. D. Vaughan. I hope Mrs. Thos. is well. Meantime, I am, yours truly, with respects.

JAMES SMITH.

I hope Mr. Snider has forgiven Mr. Robinson and James Dunn.

P. S.—Several people has said they will look at the the ship when she comes into dock: two is purchasers, if we can come on terms.

[Marked L, C.N.S.]

No. 79.

Liverpool, 15th September, 1865.

THOS. VAUGHAN, Esq.:

My Dear Sir—Your very acceptable letter is duly to hand, and contents is duly noted. I am pleased to hear that you are well, as this leaves me. But as to the ship—true, she has done better by passage than any this spring, and all on board of, officers, tells me she is fast; and by looking over her log book it looks like as if she had a choice of winds, she would acquit herself well. Every person speaks well of her in every respect. Little fault is about the size; the chief fault is low freights. I believe no ship in the market, of a colonial ship, would sell as well by fifteen to twenty shillings per ton. Plenty people looking at her, but no offers, as I tell them not to make an offer except it is like the price that

would be taken, as things is not going to remain long this way, and I may as well lose by lying as selling, and better, and will ultimately have a chance to do better with her. We are a very easy going, modest people about Red Cross street; but when the right time comes the spirit may move; no doubt it will; a person looking on, is something like the old saying, that a watched pot is long a boiling. My time appears to pass along quickly; but still looks tedious enough; the pleased looks and peculiar actions of our landlady, helps to make things go *how*. Mr. H. and me has some quarrels about the sugar in the mornings, and the yonthy ire now appears to come in for sweepstakes. I am endeavouring to do the best I can with H. and David; but when they get together they give me the worst of it. Mr. Henry has been the last three weeks up by daylight, and off to Birkenhead. I am pleased to think that this week, or this day, I hope will ease him, as the *Henry* will likely be loaded, he may be thankful. Should nothing come up in the course of a week or two, Birkenhead will be the abode of the *Palm Tree* for awhile, as the dock dues on this side is high. Then I had better close, and push my fortune, or serve my time to wood and iron ship building, as that will be the best, and this can be done in Saint John very well. Don't be tired of such nonsense, but have nothing to write to interest, as Mr. H. will give you all the business news. Meantime, yours truly,

JAMES SMITH.

You will be posted up about the iron, and Mr. Wm. E. Smith and Best.

[Marked H, C.N.S.]

No. 80.

Liverpool, 25th November, 1865.

MESSRS. D. & T. VAUGHAN:

Gentlemen—I wrote to you by last packet. Since then little has transpired of interest. It appears that a little excitement has got up about Spain blockading the Chilian Ports, but it is thought little of here on 'Change, as all agree that nothing of importance will come out of it. Bank rates has fallen, and is believed will fall, and Bombay outer freights is better. Mr. Malcom chartered 1750 ton Quebec ship yesterday, to Bombay, coals from Birkenhead, at 33s., and not to load before April at Bombay, at 50s., all free of consignments; this will pay a ship her size. 40s. is offered to Aden from Birkenhead. This looks better. But ships to load in March at Bombay cannot get over or quite 45s. As to the *Palm Tree*, she is still on hand; and my friend Mr. W. Miller still tells me that she is losing no money by lying in dock; that she will pay by keeping her to first of the year; this is to depend on how freights will be, but my own impression is, that every thing in way of ships looks better. Mr. H. Vaughan has been out frequently, and I do believe is at the present better than he has been for months past; only he is a little careful in not exposing himself much, to try and be perfectly well before he makes too free with himself. Although I mentioned to you the people in Red Cross Street was very easy people, you are the only one I ever mentioned such a thing to only Henry, and very modestly to him; and I have little doubt but we will get out all good friends, as I know at times no one can do as they would wish to do, and so far as I am concerned, I hope to get through without giving offence, or yet getting

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MESSRS.

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way, and I ultimately being, modest as the spirit being like the appears to pleased looks to how. Mr. ngs, and the endeavouring get together three weeks ink that this ill likely be the course of *lm Tree* for better close, ip building, n very well. p interest, as re truly, SMITH. Smith and

ber, 1865.

n little has has got up little of here ne out of it. nder freights easterday, to ore April at hip her size. But ships As to the er still tells will pay by freights will ships looks believe is at ae is a little well before the peo- only one I tly to him; as I know I am con- yet getting

offended; my mind is made up, to make the best of all, and to take all for the best; and I think, after this, I will be able to brag about my patience. I really expected some sort of an answer to my letter of 21st September. But a good time coming. I hope you are all quite well. Meantime, I am yours truly,

JAMES SMITH.

[Marked F, c.n.s.]

No. 81.

Liverpool, 24th Dec., 1865.

MESSERS. D. & T. VAUGHAN:

Gentlemen—Having none of your much esteemed favors to reply to, I write you a few lines by way of Portland, to state to you that as the time allotted to me by agreement, to replace to you the money you have advanced on the ship; and as nothing can be done as to a sale, at a price that would approach replacing the money, I do not feel disposed to, as it were, throw away so much money: seeing, as I do, interest accumulating, and the ship's class wearing off, I thought of putting her on a voyage, as outward freights is getting pretty good. I could get to Melbourne, for goods, and short compliment of passengers, £4,500; and make sure of £3 5s. 0d. for guano. Back she would bring 2,200 tons, if not more—this would be £7,050; in all, gross, £11,500. This would be done in from twelve to fourteen months. She should leave some money out of that, and on her arrival sell for more than now. I am offered to Bombay, out 35 for coals, and to Aden, 41, and to Shanghai out for coal, 50, and home for sugar and manilla; £3 2s. 6d., would be £12,375. This all looks as if it would leave something, and the ship might sell on the voyage. Now you know that she is losing as she is. I seen Mr. H. Vaughan this morning, and told him of these things. He said he did not wish to incur any responsibility. I asked him what security would do; he said bank security would do. Now you know it would be difficult for me to get Bank security. I told him I would put her into his hands in toto, only let her make the voyage, and Mr. Miller try and sell her on the voyage, so as to turn her in better than she now is. I do not really see but what the money could be well secured on the ship. I said no more, but went to see Mr. Peter Miller and tell him all about it, and see what can be done. I wish to do any thing in my power. Mr. Miller is in London. I must wait till he comes back; meantime I thought I would write to let you know how matters stood, and I cannot come to any other conclusion but that you will give me a chance to make the best of it, and keep you secured as well as you can be secured. My wish is to replace the money to you, and to do that you dont wish me to make such a loss as long as your money is safe. Safe, as Mr. H. told me you only want interest. Now if she lies in dock what interest will she pay me. She may lie there, and by and bye have to be sold as well as circumstances will admit. This would not create any pleasurable feeling to you, whilst I would be the sufferer. These matters I leave with you; hoping, in the end, a kind providence will bring about something that will pull all right at some time. I acknowledge I don't feel comfortable, having done myself much harm, and you little good. Meantime, I would like to hear from you.

Yours truly,

JAMES SMITH.

[Marked K, c.n.s.]

Liverpool, 10th November, 1865.

Messrs. D. & T. VAUGHAN:

Gentlemen—Having none of your much esteemed favors to reply to of late, I thus address a few lines to you. I have quite a good time, it would appear, in Liverpool, doing that arduous work called nothing; and truly, after all, it is not as easy work as I have a wish to be engaged in. Week after week goes round, and nothing to show that is really pleasing to me. As to the sale of ships—there have been a few sold, or given away, but no real good ship, of St. John build, has been sold lately. The *Palm Tree* has a good many visitors, but as yet no real purchasers. My price has been such as has frightened them. So it appears, freights is a little better, and it is hoped and expected will soon improve, that will give stimulus to prices of ships. There is two people in the market that is after her, but keeps off to see how freights will be east. I had a man from London about her a few days ago, that you know, and I think he appears to look more like business than any yet; he is to be down the first of the week, and it may be that something will come out of it. The price I have asked is £9 10s. 0d., equal to cash. This, as other ships is, at first looked high. I went all round last week, and made a general survey of all the ships for sale, which is not many, but I came back more convinced than ever, that she is better worth my price than those sold at these low prices. I wrote on the 21st Sept. to Mr. Thos. Vaughan, stating if he thought well of it, I would take £9, old tonnage, from him, or the firm; and I stated at the same time, I had not even named it to Mr. Henery V., and would wait an answer by return of post; but no answer of any kind. Yet my candid opinion is, you would do well by so doing; and even had a shade lower been your reply I would not stood about it. You could work her well. Meantime, I am yours, truly,

JAMES SMITH.

As no doubt you will be made aware of the ill turn that Mr. H. had, but now is about, being able to go out again. He was well attended by his attentive daughter. She is worthy of much credit for efficient services, and profound attention to him. Had you seen us all collected so often as we were, you would imagine yourself in St. John. We are all pleased to see him about again. It proceeded from cold he got, and the effects of one of the irons they use taking off the copper, falling on his shoulder, in the dock; but all is well.

J. S.

[Marked G, C.N.S.]

No. 83.

Liverpool, 3d Feb. 1866.

Messrs. D. & T. VAUGHAN:

Gentlemen—Your much esteemed favour, of 15th January, was duly received, and feel much obliged by its contents; but as you know my wish is to sell, and will do so at a large sacrifice before sailing. My interest in the ship is not enough to make it an object for me to sail her, but too much to lose. I would wished Mr. H. had left a power of attorney to cancel the mortgage here, on payment, to any party such power was interested—bank, or otherwise; it might saved time, and probably cavilling, after a sale is made, if it can be made, as things is here it don't take much for an excuse; therefore, I would liked to had the sale confirmed as soon as made, as I had little time to go round. However, I

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Feb. 1866.

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offered yesterday at a price I never before thought about, £8 5s. 0d. carpenters' measurement. Three parties at once said they would take one half of her. The party to whom she was offered is stirring round, trying to manage the other half, and he thinks he will be able to do so. He said he could sell her long ago, had he thought £8 10s. or 15s. would been taken. But to wind the thing up, I have come to the conclusion to make a large loss at once now, if I can manage it, rather than torment myself and others, or in any way risk or subject my friends to uneasiness, or the least fear of loss. As the account is gone out to you of disbursements, you will see they have charged the insurance home, 28th April, 1865, £297; this you brought into account in the £10,000, if my memory serves me right; however, you will put that right when you write to them; this, added to balance of freight, would £1,481 16s. 1d., at the going rate of exchange would leave a balance short of freight paying the £2,000 currency, £154 2s. 11d. stg., of course the interest to be added. It is as well to explain to them these things, as they pay no attention to any thing only what is written by you; and it would not do to throw any obstacle in the way of any purchaser, so as to effect any arrangement I might make. Please be a little clear to them on these points; as to myself, I would as soon have the ship put to your credit in toto, and settle our own affairs when I get there, if ever I do get home—it appears long. Would it not be as well to send a power to cancel the mortgage to whom you please, when the money is paid, or approved bills, so no time or obstacle would be in the way. I see nothing of a risk about it for you. Please think it over, and write, as, if possible, I will have her sold. Outward freight is good, 51s. 3d. back can be got from Calcutta now, and 36, at Birkenhead, to 5, Aden and Bombay. Meantime, I am yours, with best wishes,

JAMES SMITH.

P. S.—I still think you should taken the ship at the market value. You will not get such a ship, should you want one, in my opinion.

[Marked O, c.n.s.]

No. 84.

Liverpool, 17th February, 1866.

Messrs. D. & T. VAUGHAN.

Gentlemen—It is to be hoped that Mr. Henry Vaughan and Mrs. V. is safely home to their family and friends, and themselves and friends in good health. By James Dunn's letter to me last mail, Mr. Vaughan's son was quite smart again. This is pleasing to them to find on their return his health improved. As to myself, I am following the do-nothing system, however unprofitable it may be, and unpleasant also. It is a source of regret that last fall, when I first came, that I did not let her go at the market price. Bad and all as that would been, it is better than it can be now; interest is going on and age is going on. This week I thought I would get clear of her, as a loose story was afloat, of two parties after her; true, there was, but when they come to name their price, it was what I would not accept, as matters now is. I have seen a party that stands well, you may know them, it is Roney, Clows & Co., Chappel Street; they are a large Bombay house. I put the matter before Messrs. Miller & Mossman. They told me it was out of their power to advance anything as they stood, and as they were situated; but I have made no final arrangements as to sailing her, as I wish to sell, and try and

close the matter as well as I can. There is one more after her, and has made an offer for her, cash, which I hope he will mend, and if so I will pocket the affront, and try and get out of this as soon as possible, and will not sail her except no means otherwise is left. Every person that sees her likes her; all the fault is her size, and that is only with some. This cannot be altered now. You will be made aware of the *Parker's* return. She is in the Brunswick Basin, and will have to discharge, and go into dry dock; makes a foot an hour of water in dock. I hope a power to cancel the mortgage will be sent, as I will sell if possible; and the offer I sent to the party to-day, I think will be accepted. I hope this will find you all well. Meantime, I am yours truly, with best wishes.

JAMES SMITH.

[Marked N, c.n.s.]

No. 85.

Liverpool, 16th March, 1866.

MESSERS. D. & T. VAUGHAN:

Gentlemen—This is merely to state to you that the ship is now coppered, and ready to take in cargo, and is advertised to sail on 5th April, it appears. She will have a full cargo of goods, only 150 passengers in the poop, and 50 feet forward between decks will only be taken up with them; no cutting, as is sometimes only one ventilator through the house, and two bell mouths forward. Baines tells me she will leave for the ship £5,000, but this, I fear, will not be the case; £3 10 home for guano, U. K. Mr. Thos. V. thinks it would be as well not to engage the guano just now. Baines says he has an arrangement to shift any ship. He has to supply another, having 14 chartered, and he will give me the place of one of them whenever I wish; thus he appears to carry out the spirit of the undertaking. He has insured £9,200, in case of loss, payable to you or your order, so P. Miller told me this day. Thus you may be assured your claim will be protected as well as it can be. Meantime, I hope you are all well. It appears Mr. H.'s son is no more; we must be reconciled to these wise arrangements of providence. Meantime, I am, yours truly,

JAMES SMITH.

[Marked N, c.n.s.]

No. 86.

(Interest to 31st December, 1865.)

James Smith, Esq., in acc't. with D. & T. Vaughan.

1865.	Dr.		
July 15.	To cash, ....	.....	\$2,000 00
	" interest to 31st Dec., 1865, 169 days, ....	.....	55 56
17.	" cash, ....	.....	6,000 00
	" interest to 31st Dec., 1865, 167 days, ....	.....	164 71
18.	" cash for telegraph from Halifax, ....	.....	55
			<u>\$8,220 82</u>

1866.

Cr.

Dec. 31.	By balance of freight per ship <i>Palm Tree</i> , from St. John, N. B., to Liverpool, £1,474 16s. 1d. stg., at 10 per cent.,	\$7,210 15
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1865.

Dec. 31.	Balance due D. & T. Vaughan,	\$1,010 67
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[L.E.]

D. & T. VAUGHAN, per J. ROBINSON.

St. John, N. B.

[Marked D2, c.n.s.]

1866.

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Nov. 20.

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MEMORA

London

[Marked

James Smith in account.

[Interest to 15th February, 1868.]

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March, 1866.

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1866.	Dr.	Ya. ds.	
Jany. 1.	To balance of account,	\$1010 67 2	467 \$128 84
Nov. 20.	" Cash paid telegram to New York,	2 28 1	87 14
" 26.	" " premium insurance on ship <i>Palm Tree</i> , cash 31st Dec., £185 12s., @ 9½,	889 38 1	46 60 07
1867.			
Feby. 4.	" paid telegram from Liverpool, cash, Nov. 14th, 1866, £12, stg.,	58 40 1	98 4 38
April 10.	" Insurance on ship <i>Palm Tree</i> , £1000, stg., £528 18s. 8d., stg., @ 10 ½ cent., cash, 31st December,	2561 35	46 19 36
June 11.	" services of Captain Betts, 4 months,	320 00 2	48 13 04
1868.			
April 9.	" Henry Vaughan, acct. in England, cash 11th February, £1,880 15s. 7d. @ 9½ ½ cent., ...	6719 78	4 4 41
" 15.	" Munn, Miller & Co., acct. in Liverpool, cash 1st July, 1867, £14 19s. 3d. 8d. stg.,	71 82	228 2 69
" 16.	" Capt. Betts, acct. in London, cash 1st Sept., 1867, £34 4s. 11d. stg.,	166 66	168 4 61
	amount of mortgage and interest on ship <i>Palm Tree</i> , from 1st July, 1865, to 15th February, 1868, per acct. herewith,	46,718 73	Bal. 69 96
		\$58,519 07	\$307 50

1868.

April 16. To balance due D. & T. Vaughan, 15th February, 1868, \$3,436.88

[E. E.]

D. & T. VAUGHAN,

St. John, N. B., 16th April, 1868.

pr J. ROBINSON.

[Marked C.N.S., September 26, 1871, No. 1.]

No. 88.

With D. & T. Vaughan.

an.

\$2,000 00
55 56
6,000 00
164 71
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\$8,220 82

1866.	Cr.	Ya. ds.	
Nov. 26.	By cash from ship's boat, cash 10th October, 1866, £10 0s. 0d. stg.,	\$48 66 1	28 \$3 90
1867.			
May 23.	" received insurance claim, per <i>Palm Tree</i> , £1,052 11s. 6d. stg., cash 9th May,	5122 51	282 287 42
	" cash paid balance to Captain Betts, balance from ship <i>Palm Tree</i> , in Callao, 8th March,	1174 40	343 66 18
April 9.	" cash, sale of ship <i>Palm Tree</i> in London, 15th Feb., £10,000 stg., 9½,	48,666 66	
	" balance interest,	69 96	
16.	" balance,	3436 88	
		\$58,519 07	\$307 50

\$7,210 15

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ROBINSON.

MEMORANDUM.—The cost of suit against ship *Palm Tree*, in the Admiralty Court at London, G. B., is still pending, and any expenses is still to be charged.

D. & T. V., pr J. R.

[Marked C.N.S., September 26, 1871, No. 4.]

No. 80.

James Smith, Esq., acct. ship Palm Tree, to D. & T. Vaughan, Dr.

July 1, 1865.	To amount of mortgage,	-	-	-	\$40,000 00
Jan. 1, 1866.	" 6 months interest,	-	-	-	1,200 00
					<hr/> \$41,000 00
July 1,	" 6 months interest,	-	-	-	1,236 00
					<hr/> \$42,436 00
Jan. 1, 1867,	" 6 months interest,	-	-	-	1,273 09
					<hr/> \$43,709 00
July 1, 1868,	" 6 months interest,	-	-	-	1,311 00
					<hr/> \$45,020 00
Jan. 1, 1868,	" 6 months interest,	-	-	-	1,350 00
					<hr/> \$46,370 00
Feb. 15,	$\frac{1}{2}$ month's interest,	-	-	-	347 76

[E. & E.]

\$46,718 76

D. & T. VAUGHAN,
pr J. ROBINSON.

[Marked C.N.S., Sept. 26, 1871, No. 3.]

No. 90.

St. John, N. B., 20th Nov.

J. W. ELWELL & Co., New York:

Write Brice, at Callao, to protest the bottomry bond on ship *Palm Tree*, until we send person with money by next steamer.

D. & T. VAUGHAN.

[Marked C.N.S., Sept. 26, 1871, No. 4.]

No. 91.

Dated Cable, Nov. 14th, 1866.

Received at St. John, Nov. 15th.

To Vaughan's, St. John, N. B.—Furnish cash credit instantly to Gibbs, Callao, two thousand, to meet bottomry *Palm Tree*, enforceable in three days.

MUNN, Liverpool.

[Marked C.N.S., Sept. 26, 1871, No. 5.]

No. 92.

Dr. Messrs. the owners of ship *Palm Tree*, of St. John, N. B., in account, with interest to 31st December, 1867, with R. A. Munn, Miller & Co., Liverpool, Cr.

To cash paid, - - - - - £361 6s. 4d.

" interest, - - - - - 16 4 5

[Marked C.N.S., Sept. 26, 1871, No. 6.]

No. 93.

Messrs. the owners of ship *Palm Tree*, Dr., to R. A. Munn, Miller & Co. For disbursements per said vessel, from Liverpool to Melbourne, Callao, and U. K., - - - - - £306 3s. 1d.

[Marked C.N.S. Sept. 26, 1871, No. 7.]

No. 94.

Exhibit on fyle.

[Marked C.N.S., Sept. 26, 1871, No. 8.]

No. 95.

London, Feb. 22d, 1868.

ughan, Dr.

- \$40,000 00
- 1,200 00
\$41,000 00
- 1,236 00

HENRY VAUGHAN, Esq., South Castle street, Dear Sir—We thank you for yours of yesterday, enclosing cheque for the *Palm Tree*, amounting to £602 16s. 2d. The amount is apparently short £6, which we presume is in error. We hand you herewith Dock Company's account.

Yours, faithfully,

LLOYD, LOWE & CO.

\$42,436 00
- 1,273 00

[Marked C.N.S., Sept. 26, 1871, No. 9.]

No. 96.

London, Feb. 25th, 1868.

\$43,709 00
- 1,311 00

HENRY VAUGHAN, Esq., Liverpool, Dear Sir—We beg to thank you for yours of yesterday, handing us a cheque to balance our account £6, which is now all in order. We hope that next mail will bring us the papers of the *Palm Tree* from St. John.

We are, dear sir, yours faithfully,

LLOYD, LOWE & CO.

\$46,370 00
- 347 76

[Marked C.N.S., Sept. 26, 1871, No. 10.]

No. 97.

London, 16th March, 1868.

GHAN,
J. ROBINSON.

Received of Henry Vaughan, Esq., thirty-five pounds, for commission on sale of ship *Palm Tree*.

LLOYD, LOWE & CO.

B., 20th Nov.

[Marked C.N.S., September 26, 1871, No. 11.]

No. 98.

on ship *Palm*

H. Vaughan, Esq., owner of ship *Palm Tree*, in account current with Lloyd, Lowe & Co.

AUGHAN.

Amount account current, £2,116 19 7
Balance due to H. Vaughan, Esq., £101 8s. 5d.

[Marked C.N.S., 28th July, 1870, No. 12.]

. 14th, 1866.

No. 99.

*Ship Palm Tree, and owners, to Albert Betts.*instantly to
enforceable in

To travelling expenses, £944 15

[Marked C.N.S., Sept. 27, 1871, No. 1.]

Liverpool.

No. 100.

London expenses Palm Tree.

1867.

N. B., in ac
ann, Miller &

July 20. Mr. Wills, Proctor, on acct. *Palm Tree*, per receipt, £10 0 0

Aug. 9. Mrs. Hawkswell's board bill, 7 11 8

" 9. Five weeks' dinner, expenses extra 2s., 3 10 0

" 9. Railway, and labor here and at Liverpool, 1 8 6

" 9. Servant's attendance at Mrs. Hawkswells, 10 0

" 26. Three weeks' board at Liverpool, and lodging, 6 0 0

" 27. Railway fare to Cork and Queenstown, 1 18 8

" 27. Expenses, cab hire, &c., 10 0

" 27. Dinner at Queenstown hotel, 2 6

Sept. 5. Queen's Hotel bill, servants and baggage, 3 9 1

" 5. Telegram to Liverpool, arrival *Eurydice*, 4 6

224 4 11

[Marked C.N.S., September 28, 1871, No. 1.]

£361 6s. 4d.
16 4 5

Miller & Co.

£306 3s. 1d.

No. 101.

St. John, 23d April, 1868.

MESSRS. D. & T. VAUGHAN :

GENTLEMEN—I am in receipt of your account; but there is no account of the disbursements at Melbourne or Callao, Queenstown and London, nor of the freights. You will please to furnish that, as soon as convenient; you will please also let me know the particulars of the sale of the ship *Palm Tree*, and to whom the same was sold, and by whom. Your early answer is requested. I am, yours truly,

JAMES SMITH.

[Marked C.N.S., Sept. 28, 1871, No. 2.]

No. 102.

Henry Vaughan, Esq., to James J. Kaye, re Palm Tree.

1868.

June 22.	Examining papers received from you, and taking your directions to James Smith for his affidavit,	\$3 50
26.	Attending you and James Robinson at Mr. Palmer's, with acc't., and attending afterwards on James Smith, when he took affidavit, &c., and promised to call in the morning and complete same,	5 00
27.	Attending James Smith, altering affidavit to meet his views, and taking his deposition, and affixing notarial seal,	5 00
29.	Attending you filling in, and taking affidavit, and affixing notarial seal,	1 50
1869.		
Feb. 13.	Attending you on receiving copy letter from S. Vaughan & Co. communicating order of Judge for production of bottomry, advising,	1 50
15.	Attending Mr. Robinson, examining papers produced by him, and letter of instructions,	1 50
16.	Attending you, and drafting letter for you, to send in reply to Mr. Wells,	1 50
22.	Preparing and making notarial copy bottomry bond and notarial certificate, recording do.,	5 00
May 31.	Preparing draft of letter to J. Wells,	1 50
		<hr/>
		\$26 00

Received payment 19th March, 1870.

JAMES J. KAYE, per C. A. MACDONALD.

[Marked C.N.S., September 28, 1871, No. 3.]

No. 103.

Cork, 11th June, 1867.

H. VAUGHAN, Esq. : Dear Sir—The *Palm Tree* has not made her appearance here yet; although one ship has arrived, that sailed the same day as *Groveses*. She is said to be fast. I seen the captain; he thinks very lightly of Captain Griffiths, of the *Palm Tree*. I forgot to mention to you before I left Liverpool, that on her arrival here, there will be some bills to meet, no doubt. I will have to draw on you for them; I hope they will be light. I have sent two letters out to caution

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the captain not to come in, should the weather be fine, and I would try and get the orders to the ship—that is, not to let the ship come in, only himself; and to bring the bills of lading and copy of the charter party with him. I think it would do better to keep her outside, if the weather is fine, it would save some expense, and likely a little time. Mr. Dawson's people talk of Leith or Hull; I hope it will be neither. Londonderry is also spoken of; but this will not be known to she comes. Should she not come soon, it would be, in my opinion, the best way to insure some more on her. Please write me on receipt of this, on these matters. Jones Palmer will insure her pretty low, if wanted. My stay is long enough here already; if I could get off. Meantime, yours truly

JAMES SMITH.

I hope Mr. Miller is home and well.

[Marked G., C.N.S.]

No. 104.

Queenstown, Cork, 17th June, 1867.

HENRY VAUGHAN, Esq.:

Dear Sir—Your much esteemed favor of the 13th is duly received; contents duly noted. The *Palm Tree* keeps out of sight yet, but she must be here soon, if she is coming at all. Two ships is here that sailed since she did, and I know she is faster than they are, but this is little consolation. I will lose no time in letting you know when she comes, and will leave you to judge whether to insure more on her or not, to her port of discharge. Limerick and Londonderry and London is said still to be in want of guano; but they dont appear to know anything about where she will be sent. I will not trouble about the bills of lading, as you suggest; as for bills here, I will endeavor to have them small. You have stopped the freight only what will disburse her. This information was given me from young Dawson on Saturday, in a way that did me little honor, although modestly conveyed to me, as much as to say, things are out of your power; but I am not so thin skinned as I have been, and probably so best.

You state to me, that I had better get all the freight I can. Do you think it will be wise to get the Captain's draft for a sum of *how much*? Please write me this, as your answer will have time before she will get her orders where she is going to, and I will be guided accordingly. I have seen one of Baines & Mackay's here. He assures me that Captain Griffiths will do all for me that he can; and he tells me that Griffiths will do anything he can to help out. Would you recommend me to allow the Captain to draw for considerable amount here; if so please write me at once; that is the draft to come, or the money to come through me here, not the Captain. My opinion is, it will secure so much in case the suppliers should trouble the ship; and your claim will cover the rest. These are suggestions for you to confirm or reject or disapprove of. My opinion is, as your letter suggests, to secure all that can well be secured. If trouble then comes, it will be so much saved from them; if no trouble comes, all well, the money will be on hand. And in case of me getting the Captain to draw here, would it be well for you to notify the charterer to accept and pay said draft, so that no misunderstanding may arise by so doing. Please write me on receipt of this, and oblige yours, truly,

JAMES SMITH.

[Marked F1, C.N.S.]

No. 105.

Queenstown, June the 21st, 1867.

H. VAUGHAN, Esquire :

My Dear Sir—Your much esteemed favor, of 19th, is to hand, and duly note the contents thereof. As to drawing a bill of any amount here, I have no further object than to secure the freight, as the larger amount then would be against the ship, which would, I thought, answer better, if required, but will be guided as you wish in this matter, as all will be done with an eye for my good, no doubt. She has not made her appearance yet, nor is there any chance for her, as there is no winds for any ship outside the last fortnight, perfectly calm and N. East too. Any thing that crosses your mind that I can do, only let me know, and sha'll be consistently.

I am truly sorry to hear of my best friend's illness ; it shows us the need there is of setting loose to earth and earthly things. I parted him when I left home with much feelings of solicitude. The thought on my mind was, it is possible we may not meet in this world ; he appeared to me to have similar thoughts, by his expressions. I received from James Dunn and my wife a similar account of them as your letter conveys to me. They are, as myself, much concerned about him. I was not very well myself, when I left, between one thing and another, nor am I as well as I could wish ; but I feel thankful for what I do enjoy ; and I know at longest my time is short. I will go, if spared, to see David on board. Yours truly, with best wishes,

JAMES SMITH.

[Marked E1, c.n.s.]

No. 106.

Queenstown, July 1st, 1867.

H. VAUGHAN, Esq. :

My Dear Sir—By Mr. Miller's letter to me, you are better. I do sympathize with you in case you should be called on to suffer affliction of body ; you, of course, will try and keep your mind as easy as possible you can—you, as well as myself, has seen, and daily sees, enough of this world to in a great measure wean our affections from it. True, while we are here we must discharge the duties devolving on us, but still set loose to earth, looking forward to a more enduring inheritance in the better world. You nor any of my friends need not begrudge me of my comfort that I enjoy here or elsewhere lately, and the only comfort is that the time with me is short, and it becomes me to look beyond time for my comfort, which I am endeavoring to do. My wife writes me that Mr. T. Vaughan is a little better, but that Mrs. T. is not well. Mrs. H. Vaughan was kind enough to call on Mrs. S. to say she was from home before I left, which was the reason I did not see her, after calling there several times. She was well, as you will know from your letters. Hoping this will find you well in health. Dont let any of my affairs trouble you, as all I can do will be done, and I have no doubt all will turn out better than was thought. I have a letter from Mr. Betts, but little worthy answers ; but I will be in Liverpool, if spared, as soon as I hear from the ship. Her orders have been sent by all the pilot boats, and she will proceed on to London. But I have not mentioned Agents, as I want that to come from you. No doubt if you are able to see to it, that Captain

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Betts and you will fix up matters, so as you will well understand all that has been done—as I know all will be right for me. Dear sir, look beyond all this present world can do for us; yet we ought to be thankful for all the blessings we receive. Meantime I am yours truly: best wishes.

JAMES SMITH.

I hear nothing of the arrival of the *Sarawak* yet.
[Marked D1, C.N.S.]

No. 107.

Queenstown, July 3d, 1867.

HENRY VAUGHAN, Esq.:

My very Dear Sir—By Mr. Miller's letter to me, I am pleased to see that you are much better: I hope it will continue. The orders were given to the *Palm Tree* outside, and the captain had to come in himself for some stores. He would had to went in somewhere, so he tells me, had he not come in here; and as his orders was from me, he knew I was here, so he came to me. I stated to him in the orders not to come in here, or elsewhere, except in distress, to be arrived at London. He came in at 5 o'clock this morning, and I had him off again with two boats at half-past 7 o'clock, so you see he got despatch. The wind has freshened up this morning from West South-West, and I hope he will soon arrive. Please send orders to your agents in London to see to the ship on her arrival, as I wish all to come through you. He is to come ashore to Thompson & Bonner's office, if he receives no other orders, but not to give his papers to any person only to your people. Therefore, you will please see that these things is arranged in your own way, and any assistance I will give that I can meantime. Any accounts against captain or crew, please see that they are made out, and I will see them taken up when I am goir, as you may expect me, if well, on Friday morning—hoping you are well.

The captain speaks in high terms of the ship—she is in good order, and makes no water, no complaining in any way, only Gibbs Brothers, they used her badly. He has been 35 days from Callao; no winds, what was from the East North-East. He says she would made the passage in 80 to 83 days, had he had any winds to speak of. He says she is fast, and as to a bad weather ship, she is the best in a storm he ever was on board of.

Yours truly,

JAMES SMITH.

You can use your good judgment about more insurancee.

J. S.

[Marked C1, C.N.S.]

No. 108.

London, 16th July. 1867.

H. VAUGHAN:

Dear Sir—I was pleased to hear you got down safely, and that your friend thinks you look better.

The bill for towage has come up to day, and has gathered to its first appearance, by Mr. Miller's letter, over £25—in all over £117. Messrs. Lloyd, Low & Co. refuses to pay it out of the first payment of freight; and a further sum must be secured to them before they will pay it; the first order having been paid in dock dues, wages, &c. Should the steam tug company put a writ on the ship, you will have my advice, both you and Captain Betts, how to act to secure yourselves; and then, if any be

left, the first judgment may take it, if they can get judgment. Captain Betts has written you, and you will act accordingly, as I wish to write but little on the subject. You will see how the matter stands, and you will act as you think best. Yours, truly,

JAMES SMITH.

London, July 16, 1869.

H. VAUGHAN, Esq. :

Dear Sir—In thinking over this uneasy affair, as you know that the Queenstown bill must be paid, and so the St. John insurance, this had better be arranged at once. Your position is not so bad that this cannot be done with safety to you; and it will be well for you to give your sanction for these things, and preserve confidence and feeling in this matter. You are quite sensible of my position; and my confidence is, that you will send up your full approval of the above. Yours, truly,

JAMES SMITH.

[Marked B2, C.N.S.]

No. 109.

London, 18th July, 1867.

H. VAUGHAN, Esq. :

Dear Sir—Your much esteemed favour of the 17th, yesterday, is to hand—contents duly noted. As to the sale, time, or place, I have never taken any control of this; you must judge of for yourself; you will know my mind on all such points. I appear to be but a cypher, or a nine with the tail cut off. I trust mine of the 16th, will be answered by return of post. It is a trifle, and only just. There has been a saving been made by Captain Betts going to Callao, will you throw that overboard. Your answer by return post will decide this. I hope you are quite well.

JAMES SMITH.

[Marked A1, C.N.S.]

No. 110.

London, August 12th, 1867.

H. VAUGHAN, Esq. :

My Dear Sir—I hereby enclose to you a letter that has been, by way of mistake, I presume, enclosed to me, from Liverpool, of James Vaughan, Esq. I hope this will find you well. I have received a number of letters from home with deep regret for the loss of my good friend, and dear to you and yours, and his end; from the pen of my brother-in-law, Mr. McMoran, that visited him frequently, especially near the close of life, writes to me pleasingly, and quotes some of the conversations passed only a very short time before his last. I received a letter from Mr. Miller, and another copy of one to Lowe, which has had my attention. The old story has been repeated, that the one doing all they can, what that is I don't well know. He told me he would write to Mr. Miller. Captain Betts has gone down to Liverpool; he complained several time of losing time here, which, no doubt, he was doing; and to help that, I called on my friend, and made him acquainted with the matter, and also took Captain Betts to him—Mr. Strang—in confidence, to tell him what he had to say, or tell about the matter. My sole object in this was and is for Mr. Strang to have the document transferred to him properly, to be held in case of need to protect all concerned against the robbery and imposition of the party prosecuting; and I trust that

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ES SMITH.

July 16, 1869.

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you will think with me, that this is a step in the right direction, as it will only be used for protection to retard the progress of the party. I hope, therefore, that you will see that the bottomry is properly transferred to Wm. Strang. He will have some weight in this matter, and will help both of us out, if he can. Yours truly,

JAMES SMITH.

[Marked Z, C.N.S.]

No. 111.

London, 18th August, 1867.

HENRY VAUGHAN, Esq.:

My very Dear Sir—Your much esteemed favour of the 15th is duly received and contents duly noted. In answer to your first—You say you do not wish to interfere with my business and Captain Betts. You do quite well know that whatever was or is done was to protect you as far as I could do; and you as well know it was at my expenses, and by my authority he acted; but here let me remind you, that it is quite easy for him to overstep my authority. This I do not wish to enter into now, but to try to construe the best of motives by me, must not be indulged in by him or any other, as much will depend on good faith; but if my good begins to be evilly spoken of, it is full time I should know it. You say it is enough for you to look after your own business; so it may be; but had I taken that plan of doing, I would been better off, and probably better thought of. The second matter you mention is, what is my object in wishing the bottomry bond turned over to Mr. Strang. Here I would answer, so as not in any way to be misunderstood. Captain Betts complained several times to me that he was losing his time, and also expenses to others. This is true; and to save that, and put the bonds into a man's hands that is well known for his high standing in London, as well as the house he forms a part of, was, and is pleased to think that he would act, to try and do both you and me good, if it could be done; and will you pretend to say he would not do so. This is a full explanation to your question about the bond; and it would only remain for you to say what action you wished to have taken, and stop the expenses of Captain Betts, and meet his views, and my plan had better be carried out, and make it agreeable to all. As to the sums you have against the ship as times is, it is large, which I regret as well as you do; but let us make the most of it, and not now fall out by the way. You would not stand the odium that I have heaped on me, I am quite sure; but having begun in good faith, I will not be the first to quarrel. When the ship first came home, had I fully known she must be sold, she would been sold. When I could get 48s. 6d. to Aden, and, if required, all paid before she started, nearly a year would been saved, and money earned. I would not allude to this, had you not alluded to such yourself; and more, had I put the ship into Lampart & Holt's hands, in place of others, you nor me would not had this trouble now. In viewing the transactions all over, had I taken my own way, every thing would been harmonious in the end, and no loss to any concerned; and if any loss is sustained to you, in viewing the transaction all through, your own people has had the doing of it; and my loss will, so far as I see, no less than £8,500; but I care not for that, if I can satisfy your claim. You may not be aware that I paid for that money the first year 8½ per cent., included in the amount charged her, and settled for. I have an answer

from Captain Betts, if an answer you can call it, to a note sent him, in the cool terms as follows: I have come to the conclusion not to enforce the bond until the last moment, as I am in no immediate want of funds. A happy state to be in; it won't do, I assure you such. It will give the best satisfaction to do what has already thought of; let the bond be turned over to Wm. Strang, to be used at your discretion, and this will save expenses of Captain Betts, and allow him to turn himself to better account. I met Baines to-day, and Mackay; they both said it was much better, you to see Mr. Bonner; it would not prejudice your claim, and let him know that your claim must be paid, and that first, and he would withdraw the claim, and would done so, had you seen him, long since. Yours truly,

JAMES SMITH.

[Marked Y, c.n.s.]

No. 112.

London, 16th August, 1867.

H. VAUGHAN, Esq.:

Dear Sir—I am truly sorry that matters appear to look as they now do; to me it is painful and unexpected. Samuel has gone with Captain Purdy, saying as he did that he could not get one week's board, even when engaged as ship-keeper, and spending over 16 months on board of the *Palm Tree*. As you know, he was as well and as carefully cared for as some people imagined they were, and no doubt has cared for their children, and no man can tell what may befall him or his: we are here to-day but to-morrow may find us as sometimes is not as we would; but the chief purport of this note is to inform you that no one appears to have any charge of the ship as to assume the post of ship-keeper. Now this is not right to have a property lying without any person to look after it, so valuable as it is. I need not here tell you that I have no means of paying any person for that or any other services rendered to her or to be rendered to her, as my order has been refused for pay heretofore. I only wish to convey to you this information and hope for your own interest, if you care not for mine, you will authorise some one to look after her, least loss and damage be sustained. No time is to be lost in looking after this matter, as she is left to herself solely, except only occasionally the Admiralty officer, which is only on board, I am told, occasionally. I hope you continue well, and that all is well at home. Meantime, I am yours truly,

JAMES SMITH.

[Marked X, c.n.s.]

No. 113.

London, 20th August, 1867.

H. VAUGHAN, Esq.:

Dear Sir—Your much esteemed favor of the 19th is duly to hand, contents duly noted. You need not have much trouble nor cost you much thought as to what answer to give me in anything, as I wish nothing hidden nor what would cause uneasiness. This I have tried to do to the present, and wishes still to continue the same; and if I have committed any blunders they have been made not willingly, but to meet others' views which I wished to be guided by, thinking that their interest was mine and mine theirs, and I wish to continue that way if I

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JAMES SMITH.

[Marked V, C.W.S.]

No. 114.

Mr. Vaughan will please get as much information as possible from Mr. Miller about the policies of *Palm Tree's* insurance, and get them if possible. If they cannot be got, please send the average statement and protest with the vouchers, as I want to put them into hands here that will secure the money if possible, and place it to my credit with you in St. John. I want to try and secure it out of the hands of these sharks as soon as possible, as they will follow up and try and get the last farthing they can. I want to keep you whole. As things goes on here I will keep you posted up. I wish you safe down and a continuation of health, hoping next mail will bring more pleasing news from Mr. Thomas and all. I am ready to say that my enjoyments, so far as this world is con-

cerned, is not much; but the time is short; I will get through it, and, I trust, soar above it all in that better world. I would not hasten the Lord's time, but I care not how soon it will come. Meantime I am yours truly, with best wishes.

JAMES SMITH.

[Marked R, c.n.s.]

No. 115.

No. 4,084.

In the High Court of the Admiralty of England.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To the Marshal of the High Court of Our Admiralty of England, and to all and singular his substitutes, Greeting. Whereas a Cause of Wages has been instituted in our said Court on behalf of Samuel Smith, of St. John, New Brunswick, Mariner, lately serving on board the vessel *Palm Tree*, against the said vessel, (whereof now is or lately was Master) her Tackle, Apparel, and Furniture, and the freight due for the transportation of the cargo now or lately laden therein, in the sum of three hundred pounds. And whereas the said vessel *Palm Tree*, and the said freight, are now under arrest by virtue of a Warrant issued from the Registry of Our said Court. We therefore hereby command you to cite all persons who have or claim to have any right, title, or interest in the said vessel *Palm Tree*, her Tackle, Apparel, and Furniture, or on the said freight, to, enter within six days from the service hereof (exclusive of the day of such service) in the Registry of Our said Court, an Appearance in the said Cause. We further command you to warn all the said persons that, if they do not enter an Appearance as aforesaid, the Judge of Our said Court will proceed to determine the said Cause, or make such Order therein as to him shall seem right. Given at London, under the Seal of Our said Court, the seventh day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

A. H. BATHURST, Assistant Regr.

CITATION IN REM.

£300,

Taken out by H. G. Stokes,

[Seal.]

18 Berwick Hill, Doctors Commons.

[Marked c.n.s., Nov. 9, 1871, No. 1.]

No. 116.	On file,	Marked c.n.s., Nov. 9, 1871, No. 2
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No. 135.

The Palm Tree.

Received 20th July, 1870, of Henry Vaughan, Esquire, by payment of Messrs. Lloyd, Lowe & Co., the sum of fifty pounds, in full discharge of the balance due to me for costs in all actions relating to the above vessel.

£50.

JNO. WILLS.

[Marked Sept. 28, 1871, No. 4.]

No. 136.

The Palm Tree.

Received 6th January, 1868, of Mr. Vaughan, the sum of fifty pounds on further account of expenses.

£50.

JNO. WILLS.

[Marked Sept. 28, 1871, No. 5.]

No. 137.

The Palm Tree.

Received 5th Nov. 1867, of Mr. Vaughan, the sum of twenty pounds, on further account costs.

£20.

JNO. WILLS.

[Marked Sept. 28, 1871, No. 6.]

No. 138.

The Palm Tree.

Received 31st December, 1867, of Mr. Vaughan, the sum of one hundred and thirty pounds, on further account.

£130.

JNO. WILLS.

[Marked Sept. 28 1871, No. 7.]

No. 139.

The Palm Tree.

Received 30th December, 1867, of Mr. Vaughan, the sum of one hundred and seventy pounds on further account.

£170.

JNO. WILLS.

[Marked Sept 28, 1871, No. 8.]

No. 140.

3, York Buildings, Dale Street, Liverpool, 13th June, 1867.

JAMES SMITH, Esq. :

Dear Sir—Your esteemed favour of the 11th came to hand. I note the contents, as regards the insurance. You will let us know where the ship is ordered to before the insurance can be done. You will let us know the amount you want done, as regards the bill of lading and the charter party from the captain. I don't think you need hasten about them, as I have got my lawyer to put a stopper on the freight in Thompson & Bonard's hands, after paying all wages and inward disbursements; the balance we have stopped. The only thing you can do, is to stop him from spending so little money as possible in Cork. You had better let the captain draw on Thompson, Bonard & Co., in London, for his disbursements in Queenstown; that will be better than drawing in Liverpool. Get as much out of the freight as you can; the creditors will get what is left. I hope before this reaches you, the ship will be with you.

I remain, yours truly,

HENRY VAUGHAN.

[Marked G.M.S., Nov. 9, 1871, No. 21.]

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No. 141.

1600 Tons Ship.—*Memorandum of Anchors and Chains.*

2	Bower anchors, patent each, iron stock, $36\frac{1}{2}$ cwt.		
180	Fathoms of chain, 1 15-16 inch.		
Inner bobstay and slings, for lower yards, 30 feet $1\frac{1}{2}$ inch.			
30	Feet of inch.	44	Feet of 7-16 inch.
50	" 13-16	60	" 7-19 "
22	" 9-16	24	" 3-8 "
126	" 9-16	19	" 5-8 "
50	" 7-16	34	" 1-2 "
160	" 3-4	60	" 1-2 "
180	" 5-8	36	" 5-8 "
60	" 9-16	48	" 9-16 "
72	" 7-16		
80	" 1-2		

4 dozen galvanized hanks, for double stays.

6 " do. single stay.

[Marked c.n.s., Nov. 24, 1871, No. 14.]

No. 142.

Iron Knees for Lower Hold.

17 pairs	24 feet long,	} These iron knees require to be 5 inches wide, and at the angle of the throat 5 inches, at the throat bolt $3\frac{1}{2}$ inches, and at the joints of timbers $3\frac{1}{2}$ inches.
3 "	23 "	
3 "	22 "	
3 "	21 "	
1 "	20 "	
1 "	19 "	

56 arms for the above, 4 feet long, also 4 straps, 20 feet long, $5 \times 3\frac{1}{2}$, and also 4 arms, 4 feet long, $5 \times 3\frac{1}{2}$.*Main Deck Knees.*31 pairs 5 feet 4 inches long, $4\frac{1}{2}$ inches wide, thickness at the throat bolt $3\frac{1}{2}$ inches, and allowed to taper at the ends to one inch thick; 62 arms for the above, 4 feet long, $3\frac{1}{2}$ at throat bolt, and taper at the ends to one inch.

[Marked c.n.s., November 24, 1871, No. 15.]

No. 143.

Memorandum of Canvas.

20 bolts	No. 1.	9 bolts	No. 5.
27 "	" 2.	10 "	" 6.
19 "	" 3.		
17 "	" 4.	102 bolts.	
60 fathoms	5 inch bolt rope.	100 fathoms	3 inch bolt rope.
50 "	" $4\frac{1}{2}$ "	60 "	" $2\frac{1}{2}$ "
50 "	" $4\frac{1}{2}$ "	50 "	" $2\frac{1}{2}$ "
40 "	" 5 "	50 "	" $2\frac{1}{2}$ "
40 "	" $3\frac{1}{2}$ "	40 "	" 2 "
50 "	" $3\frac{1}{2}$ "		

2 coils of $1\frac{1}{2}$ inch manilla, each 100 fathoms.

10 dozen of three-thread seaming twine.

[Marked c.n.s., November 24, 1871, No. 16.]

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Marked c.n.s.

No. 145

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Fore rigging,	96 5
Main rigging,	104 5
Fore and main stays,	53 5
Fore and maintopmast backstays, ..	128 5
Fore and maintopmast stays and bowsprit shrouds,	95 4½
Mizen rigging and stay,	85 4
Mizen-topmast backstays and stay,	65 3½
Jib-stay and guy, and main-topgalt. stay,	68 3½
Flying-jib stay and guys, foretop-gallantmast stay and lower brace pendants,	80 3½
Fore and main-topgal. backstays, double mizen-topgal. backstays, single mizen-topgal. stay, fore and main-topmast rigging, topsail brace, pendants and runners,	300 3
Mizen-topmast rigging and main-royal stay,	54 2½
Fore and main-royal backstays,	90 2½
Fore and main-royal stays, mizen-royal backstays and topgal-lantmast rigging,	130 2

Lower and topsail lifts, 1 coil,	100 51
--	--------

2 coils, each 80 fathom 5 inch laniards.

1 " " 80 " 41 " crossjack and topgal. lifts.

1 " " 80 " 4 " laniards.

1	"	"	80	"	31	"	do.
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1 " " 50 " 24 " do.

All of the foregoing hemp to be wormed.

Inch	4	3½	3¼	3¼	3	2½	2½	2¼	2	thd.	thd.	thd.	thd.	thd.	thd.
Coils	1	2	1	2	2	1	1	1	2	21	13	15	12	9	6
										2	4	8	2	3	2

3 cwt. fine Hambro line; 5 cwt. 3 thd. spunyarn; 5 cwt. 2 th. ditto; onseline and marline, 1 cwt. of each.

hob.	4	3½	3½	3½	3	2½	2½	2½	2	1½	1 coil, 20 fathoms, 6½ inches, mast- ing rope.
boils.	1	2	2	4	4	3	6	6	4	4	

1 hawser, manilla tarred, 10½ inch, 90 fathoms

4 bolts Osnaburgh.

2 bolts No. 5 Brown Canvas.

Marked C.N.S., November 24, 1871, No. 17.]

No. 145. Power of Attorney from Thomas Vaughan to Albert Betts, dated 21st November, 1866.

No. 146.

St. John, N. B., May the 10th, 1864.

HOS. VAUGHAN, Esq. :

Dear Sir—I hope you have arrived safely, and in good health. We are making slow progress with the ship; we are only scarfing the keel; we will be framing in a few days. I have a good deal of trouble to get the balance of the crooked timber, but now has got sight of most of it; and as lumber will soon be coming down the river, will get all soon. I hope to

complete her. I fear we will not be able to launch the time stated to you before you left in my letter to you. Should you be so fortunate as to sell her before by approval, it will be last of October before we will launch. In case you can sell her, it would be better to give me as long time as possible; say to launch early in November, if possible, sooner. She will take considerable time, as I will try to have her as good as any of our neighbours ships. I named to you £11; any thing over £10 would do; but try what can be done.

Herewith I send you an order for iron. Please ship it as soon as you can.

Common Iron, all round.

4 tons of inch and $\frac{1}{2}$.	6 tons of $\frac{1}{2}$ inch and $\frac{1}{2}$.
2 tons of inch, round.	2 tons of $\frac{1}{4}$.
3 tons of $\frac{1}{4}$.	1 $\frac{1}{2}$ ton of $\frac{1}{8}$.
1 $\frac{1}{2}$ ton of 1 $\frac{1}{4}$.	

Spikes Iron.

2 tons of 12 inches.	1 ton of 8 inches.
2 " 10 do.	1 " 7 do.
1 " 9 do.	1 " 6 do.

Iron for Straps for Frames.

64 bars of 15 feet each, and 5 $\frac{1}{2}$ wide, $\frac{1}{4}$ thick.

I would like to have all the above iron as soon as possible.

And a lot of Muntz metal—5,200 pounds of $\frac{1}{8}$; 2,240 pounds of metal spikes, 13 inches long, with spike points, and good round heads and 1,700 pounds of inch metal. This lot of metal will do to be here in August. But I would be guided by price, and the prospect of getting it a low price. The inch and quarter for the iron knees, &c. Mr. Henry Vaughan tells me he has a lot of 1 $\frac{1}{2}$ metal coming out: this I may take if not, I will write you. Please see how rigging is approved of, as would like to know. In sending the iron, please send 3 bars of 10 or 11 inch wide, $\frac{1}{4}$ to inch thick, and 14 to 15 feet long; and two bars inches wide, and 15 feet long, and $\frac{1}{8}$ or $\frac{1}{4}$ thick. I will write you by next packet some further orders, and oblige. Yours truly,

JAMES SMITH.

Please give my best wishes to Mr. Miller; he may be able to assist you in making a good sale of the ship.

I have not enquired of Mr. H. Vaughan whether you named to him any thing about the balance of the money I want to complete the ship. If you have not, please write him a few lines, so that he may have time to answer you, and oblige. Yours truly,

JAMES SMITH.

Is our friend Mr. Allas Smith going to square the bank account, or doing anything for us.

[Marked C.N.A., Nov. 24, 1871, No. 4.]

No. 146 $\frac{1}{2}$.

For ship of 1600 tons—Memorandum of Wire Rigging.

				Fathoms.	Inch
Fore rigging, . . . . .	. . . . .	. . . . .	. . . . .	96	5
Main Rigging, . . . . .	. . . . .	. . . . .	. . . . .	104	5
Fore and main stays, . . . . .	. . . . .	. . . . .	. . . . .	53	5
Fore and main topmast backstays,	128	5
Fore and main topgallant stays and bowsprit shrouds,	95	4

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		Fathoms.	Inches.
me stated to	Mizzen rigging and stay,	85	4
fortunate as	Mizzen topmast backstays and stays,	65	3½
efore we will	Gib stay and guys, and main topgallant stay,	68	3½
ve me as long	And lower boom penants, fly jib stays, and guys fore-		
sible, sooner.	topsail stay,	80	3½
good as any	Fore and main topgallant backstays, double mizzen top-		
ng over £10	gallant backstays, single main topgallant stay,		
	fore and main topmast rigging, topsail braces,		
s soon as you	penants and runners,	300	3
	Mizzen topmast rigging and main royal stay,	54	2½
h and ½.	Fore and main royal backstays,	90	2½
	Fore and main royal stays, and mizzen royal backstays		
	and topmast rigging,	180	2
	Hemp cordage, lower and topsail lifts, one coil, 5½.		
	2 coils, each 80 fathoms, 5 inch, lanyard rope.		
	1 do. 80 4½ " cordage lifts.		
inches.	1 do. 80 3½ " "		
do.	1 do. 80 4 " lanyards.		
do.	1 do. 50 2½ " "		

(All of the hemp to be wormed.)

Hemp, not to be wormed.

Inch	4	3½	3½	3½	3	2½	2½	2½	2	thd.	thd.	15	12	9	6
Coils	1	2	1	2	2	1	1	1	2	2	2	4	8	2	2

3 cwt. fine houseline line; 5 cwt. 3 thd. spunyarn; 5 cwt. 2 th. ditto;
houseline and marline, 1 coil of each.

Manilla Cordage.

Inch	4	3½	3½	3½	3	2½	2½	2½	2	1½
Coils	1	2	2	4	4	8	6	6	4	4

1 coil of 6½ inch masting rope.
1 hawser, manilla tarred, 10½ inch, 90 fathoms
4 bolts Osnaburgh.
2 bolts No. 5 Brown Canvas.

[Marked c.n.s., November 24, 1871, No. 1.]

ES SMITH.

No. 147.

able to assist

St. John, N. B., June the 21st, 1864.

named to him

THOS. VAUGHAN, Esq.:

plete the ship

may have time

Dear Sir—Your much esteemed favor of the 27th May is to hand, contents duly noted. You had shipped the iron rods and had the straps under way, and caps, spikes, &c. You have lost no time in executing the order. You state metal is high and canvas; it will be time enough for either, for I am not getting ahead as I thought I would, as Lloyd's Surveyors here are troubling the people here to a great extent in consequence of the reproof he has got by the trouble with McDonald's ship that was overhauled at home, and two of them here: 96 foothooks and navels has been taken out of one here, and two keel pieces and a stern-post out of another. Thus he appears to revenge his spite now on others; but as to myself, he has not troubled me but little, and that only in the way of caution, only two keel pieces he rather found fault with; but I told him if anything was the matter with them I did not wish to attempt to put them in, so I at once laid them aside. You seen what

gging.

Fathoms.	Inch
96	5
104	5
53	5
128	5
95	4

they were like before you left, so now we have no complaints; but the fore body foothooks was not, at least some of them, had not really full sized roots, as you know it is hard to get roots to stand the full size of the body every place; thus I left them one side, as I did not want to have any collision with him, and said nothing about them, and in consequence of the streams being low, and little timber has come down yet of any kind but spruce logs. I am now standing nearly still for want of 80 foothooks and naves, as I am determined to get proper sized roots if possible, and avoid complaints. I hope to get them in a few days, and then we will get ahead. It is a pity to lose such weather as we have now, for it is very fine at present. I was going to send you an order for all the refined iron by last mail, but put it off, and even now has put it off, but will forward it by next mail. I notice your regret that the ship is so large, as well as my old friend Mr. Miller. I now am sorry it is so large, but had I got the timber I contracted for, I would put her off earlier and trust a kind Providence for a sale. And as it is, if she should not sell, I should know that she will be a ship that will do her work well, and amongst us we will find means and ways to keep her at work to she earns a character, and do probably better than we think she will now; but time will tell the result. I also notice you mentioned to your brother Henry about a further sum of money. Timber is high, and the ship will take a large quantity of timber and other materials. I also mentioned it to Henry since I got your letter. He stated to me that you had mentioned it; he signified to me it would be all agreeable, meantime it will be well for you to arrive at a permanent arrangement in time, and write him as well as myself the way and manner it will be arranged. I have no hesitation in entering into any permanent arrangement in order to carry and, but out the utmost confidence and security for both of us mutually, as in such business it requires a perfect understanding, with confidence on both sides. As in a few weeks the bulk of the timber will be down, and I must secure what timber will do her, and I will have to take, with what I require, considerable more than I do want of smaller size, in order to get the large, as you know it comes mixed, and is sold together: it will take £10,000 to do me; thus I wish you to point out the way to arrange this, so that all parties will be fully aware of our arrangement; and so far as I am concerned, or yourself or brother, I have no doubt but all will turn out satisfactory. You will be pleased with the model. She will be what I intended, a good poor man's ship. She deceives me much if she is not a first-rate working ship, and a good carrier, and light draft of water, and will go into any port where a commodore and 1,000 ton ship can go as to draft of water.

Don't be weary of reading this scroll of a letter. I need not tell you of family affairs, as you will be provided with that from the proper quarters. Mrs. Vaughan had an ill turn, but is now pretty well over it. Mrs. James L. Dunn has got a young son nearly large enough to drive over her. I hope you are well. I observe your remarks about friend Smith's pay that we had a meeting; the contents will be forwarded to Mr. Miller next year. Best will be Attorney General, when elected for Carleton. Meantime, I am yours truly, JAMES SMITH.

Please remember me to my good old friend, J. Miller, Esq.
[Marked c.s.s., November 24, 1871, No. 3.]

St. John, N. B., July 5th, 1864.

ints; but the
not really full
the full size of THOS. VAUGHAN, Esq. :

not want to Dear Sir—Since writing you on the 21st June, I may say we have
and in consequence nothing at the ship, as crooked timber has not come forward, the
come down yet, river being so low, and all or nearly all the logs has been left in the streams,
all for want of and such timber as I want has not come to market as yet, and I really
sized roots if fear it will not come to fall rains brings it, and I will not put in any-
few days, anything but what is good and large, and will wait to it can be got. Mean-
er as we have time we are putting the yard right; but this don't pay: therefore I have
an order for not forwarded the order for refined iron, as mentioned in my last letter.
now has put it may be that I will have to pull in a small sized ship, and if so the
that the ship sized iron I would require would be of smaller size, therefore I will wait
sorry it is so a little longer; but R. Rankin & Co. has a lot of large roots coming
off earlier and that has been hauled into the main river. I have the promise of them
ould not sell, should they do me. In that case I may keep on with the large ship,
and amongst us and then I find the long straight timber will be troublesome to get. I
arns a charac am into it now and must work out the best way I can, and hope for the
but time will best. Meantime I am yours truly,

JAMES SMITH.

St. John, N. B., Sept. 20th, 1864.

had mentioned THOS. VAUGHAN, Esq. :

it will be well Dear Sir—Your much esteemed favour of the 3d Sept., is to hand,
and write him contents duly noted. The reason that you have none of mine to reply to
ed. I have not, I fully understand, that you would not had such a long stay in Eng-
order to carry and, both from your friends and yourself, or assuredly I would done my-
nally, as in itself the pleasure of writing to you. I generally heard of your health by
confidence on J. Robinson. But now, as it appears possible that this will find you still
be down, and in England, first, I am pleased to hear of your health being tolerably
to take, with good; next, I am truly sorry that things don't look well for ship sales
smaller size, for freights is a change for the worse; but I am into it now, and must
ed is sold to make the best of it. I must confess if I lose money, I have worked
point out that hard to do so; but I am not amongst those of small faith; yet, I would
of our arrange not be presumptive, but all may come out right. Yet, this I do know.
er, I have not will have a good looking ship, and a good working ship, and a good
ased with the sailing ship, and a good carrying ship, and a light draft of water; and
's ship. She another thing, I have faith to believe that D. & T. Vaughan & Co. has
d a good can means to sail her if all goes to all, and I also have faith in them to put
ere a commodore and myself into their hands with all confidence, and make the best
of all—not that I would be misunderstood,—that is to say, that I would
d not tell you recklessly run myself into trouble, or yet my friends; but in the present
e proper quare case I am into it and must come out with whole cloth if I can. You have
over it. Mrs. lost my namesake, and this ship will well replace her if you wish; how-
to drive oxen ever this will come in by and by. We have all the timber for her, and
Smith's pay that of the best; but it has been purchased at prices that is far beyond any-
warded to nothing that I ever done. Mr. Tucker and Lapthorn tells me she has the
u elected for best frame in the Province. We have the upper deck beams across and
ES SMITH. kneeling them off, and lower deck strings and clamps, and three streaks
Esq. between decks, and kelsons in such as you nor myself never saw in any
ship for size and lengths. I had to stop for 6 weeks for want of crooked

timber, as the people that undertook getting the frame failed in getting it out: what they did get we condemned a good deal of it. We have got £4,500 from your people, and what you shipped to me. This is how money matters stands at present, but will soon call on them for more, as we pay as we go, all but £1100 of timber that stands over for three months, falling due in November. I have said little to your brothers, as I fully expected you home; but one day I asked Mr. Henry if you and him had any conversation about further advances. He told me you had, and said that would be all right. I wish you to fully understand that we will make all things agreeable as to securities, so that perfect confidence will be ensured, so far as I am concerned, and I know you only require a good understanding. It may be that to sell, money may be lost, as appearances now are, but some good results may yet be awaiting her. We agree with you, or at least we are acting on the assumption, that it would not be prudent to launch this fall or winter, as insurance would be high, and the difference of insurance will pay the interest. But least we should be disappointed about hachmatac timber in the winter, we have got a good supply for her, and will try and have her ready early in spring to put her in market. If she sells, all well, and if any ship of her size will sell she will. We have had up-hill work since we begun, making yard and building wharves, &c. This is pretty well about done now, and the yard is tolerably convenient. It is strange that people will make nothing short of slaves of themselves for food and raiment, and in some instances scarcely afford themselves that, and the promise being your food shall be given and your water sure. Some alterations has been since you left that you nor myself little thought of: Parson Vaughan is called home to his reward, as no doubt you are aware, and many more, and we know not how soon we will be called on. Time is short, but eternity is sure. I trust that in the midst of your cares, as we all have cares, no matter how favorably we may be placed in the world, that you bear in mind we must leave all, and know not how soon. As to myself, I really wonder how it is that I have got myself into such an uneasy position, yet I feel thankful that my health is good, and a good hope that after all is done here; but what would it profit a man should he gain the whole world and lose his own soul. I may send you an order for iron knees next packet. Meantime, I am yours truly, with best wishes.

JAMES SMITH.

Please remember me in the kindest manner to my good old friend Mr. Miller.

[Marked c.m.s., November 24, 1871, No. 12.]

No. 150.

26th September, 1864.

Since writing the foregoing, we have received £500 more, making the sum the mortgage covers. I have insured from or against fire £2000, and will hand over the policies to your people; and as the ship progresses, will keep her insured, so that will be a protection till she is launched, and will effect more insurance, and will also hand them to your people. I write these particulars to you, as I have some idea that it may be possible you may remain all winter in England, so that you may write me, and your people make any suggestion on the above matters

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and old friend

SMITH.

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marked C.N.S., Nov. 24, 1871, No. 11.]

marked C.N.S., Nov. 24, 1871, No. 8.]

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marked C.N.S., Nov. 24, 1871, No. 8.]

marked C.N.S., Nov. 24, 1871, No. 8.]

marked C.N.S., Nov. 24, 1871, No. 8.]

that you would like to have carried out; and please do so by return of mail, as I wish you to be the principal in this matter; and I will try and meet your views, and see that they are carried out. I will send for the iron straps or knees by next mail. If I cannot get them on as good terms here.

Yours truly,

JAMES SMITH.

I heard awhile ago that Mrs. Vaughan was sent for. This looks like your staying in England this winter.

[Marked C.N.S., Nov. 24, 1871, No. 11.]

No. 151.

St. John, N. B., Oct. 10th, 1864.

THOS. VAUGHAN, Esq.:

Dear Sir—Your much esteemed favor of two packets ago is to hand, contents duly noted. I wrote to you on the 26th ult. some details of ac't., and would send for the iron knees by last packet, but the Straight Shore iron works led me to think that they would furnish me with the iron until we began to state terms, and they were so independent that I thought I would send to you for it, and at the same time send for the outfit in toto, thus you have herewith a list of chains and anchors and cordage and canvas and iron knees, which you will please send by any convenience you see fit, so as to be here to launch by not later than middle of April, but I suppose the sooner you can ship it the better. The iron knees I would like to have them as soon as they can be got, as we will be ready to put them in in three weeks from now, if all be well, as we have begun to ceil the lower hold this day, and will have it all done not later than three weeks. The upper deck is all kneed off but two berths forward, and the lower deck has three berths forward and three aft to knee off; our waterways is on deck and hatch-combings down; our plank are pretty near all sawed and ready for her—masts under way, but will not hoop to spring. In consulting Mr. D. Vaughan, we thought it best to put iron rigging on her. It is the first I have had anything to do with. In sending the iron knees please send 44 bars of $3\frac{1}{2} \times \frac{3}{4}$ iron for mast hoops, and 20 bars of $3\frac{1}{2} \times \frac{3}{4}$, all best refined, and along with it please send two tons of good oakum: this will do for the bottom, as the decks and topsides will be caulked before that could arrive, as I want all the painting done as soon as we can, so as to have nothing of that to do when she is launched. I hope she will do better than present appearances would now present to the mind; one thing I do know, she will be a likely ship, and a good ship as can be built in this Province. We have got on for so far with Tucker quite well. He told me she has the best frame in the Province, and well he may say so, for I would not undertake getting such a one again. In talking the matter over of balance of advances, over and above the security given, your brother David told me you had written that you should have 2½ per cent., if I understood him rightly. I did not understand you so. As things looks we will have a small margin to come and go on; but should you decide on that I will not dictate, but my impression is that you will not—for in reality the business, I don't think for this time at all events, will not afford it. Hoping you are well, I remain yours truly.

Please remember me to David.

JAMES SMITH.

[Marked C.N.S., Nov. 24, 1871, No. 8.]

No. 152.

Saint John, N. B., October 24th, 1864.

THOMAS VAUGHAN, Esq. :

Dear Sir—Having none of your much esteemed favors to reply to since I last wrote you, on the 20th, hoping you are well as this leaves me. I then forwarded to you an order for anchors, chains, canvas, iron knees, &c., which I trust you have got, and have been fortunate enough to get a ship coming here to send it by. I would like to have the iron knees as soon as possible, as they are tedious to get through with. I would like to have the chains and anchors also, lest anything should prevent us from launching 15th April, as we will be well ready before that, should anything transpire that would send along a purchaser. She will be a good looking ship. I herewith send you a rough copy of my last order, least anything should have transpired that would prevent the order reaching you; but this is not likely. Knowing you will do the needful, I need not add any more. I hope you keep her before you, should you find any person likely to be a purchaser for her in spring. We have had great fall rain, and all the timber has got down, which will help to make stuff to load with in spring. Meantime, you will be posted about family affairs. I am, yours truly, with best wishes,

JAMES SMITH.

Memorandum of Canvas.

20 bolts,	-	No. 1	50 fathoms bolt rope,	No. 4
27 "		2	50 "	3 $\frac{1}{2}$
19 "		3	50 "	3 $\frac{1}{2}$
17 "		4	100 "	3
9 "		5	60 "	2 $\frac{1}{2}$
10 "		6	50 "	2 $\frac{1}{2}$
			50 "	2 $\frac{1}{2}$
			40 "	2
102 bolts.				
60 fathoms of bolt rope		5	2 coils of 1 $\frac{1}{2}$ inch manilla, 100	
50 " " "		4 $\frac{1}{2}$	fathoms.	
40 " " "		4 $\frac{1}{2}$	10 doz. of 3 thd. sewing twine.	

[Marked Nov. 24, 1871, No. 2.]

No. 153.

St. John, N. B., Nov. 7th, 1864.

THOMAS VAUGHAN, Esq. :

Dear Sir—Your much esteemed favour of the 15th October is to hand, contents duly noted. I am sorry to hear of such poor prospects for shipping and the price of money. I think you are quite right in me not doing much this winter, but now we are paying 5 shillings, the highest for men, and material is all on hand, and the weather pretty good, and as long as the weather is good we intend to keep on, and about Christmas stop for two months, if times gets no better; by that time she will be all done, except the iron knees and caulking and paint. This can be done last of March and April. She is all ceiled but six streaks and five streaks on the bottom outside and seven streaks on top sides. The poop is all ceiled and kneed off, and forecastle nearly kneed off; the lower deck is in and upper deck about half laid. Thus you see she is well forward. As to the order sent to you for outfits, use your own judgment what time to ship them. I would like to have the iron

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knees to get them in, then it would be short work to finish her. I note your intention to put yourself out of harm's way. I think you are wise in leaving Liverpool. In the winter months the climate is too damp for you. As to the advance beyond the mortgage, you wrote to Messrs. Vaughan. Mr. D. Vaughan showed me what you wrote. I am of the opinion you should be put in funds sufficient to replace permanent interest; but I am persuaded you will exact nothing improper from me, and I am equally satisfied that I wish nothing from you only that which is right between us, as our knowledge of each other is I trust a permanent guarantee that no advantage over each other will be even thought of, therefore any views of yours in the matter will be readily complied with. I have handed over to you a fire policy of £2,000 to cover any loss in case of accident to you return, or some permanent arrangement is made for any sum wanted over the £5,000, and will do likewise for any other sum required. I wrote you what I thought would be required, including all outfits. I trust we will be much under that. She will be a good ship, but awfully expensive. You astonish me about the price of iron knees. I trust they will come lower than you state to me. Mean-time I am yours truly, with best wishes.

JAMES SMITH.

No doubt your people has made you aware of Mr. Harris's entering a foreclosure of the mortgage on iron works, and sued the bonds. This was justly provoked by the absurd conduct of Best, as usual. He sued Harris for not transferring stock of Messrs. Allan's to him. Thus he thought as they had commenced law, it was as well to retaliate. I am sorry such things should be, but we all agreed that he had no right to use such high-handed work with the Company, let Mr. Harris's grievances and his be as it would.

[Marked C.N.S., Nov. 24, 1871, No. 9.]

No. 154.

St. John, N. B., December 5th, 1864.

THOS. VAUGHAN, ESQ.:

Dear Sir—Your much esteemed favor of the 12th November is duly to hand, contents duly noted. You received my order for outfits: they were not ordered, no ship being on the berth. It will be a saving, the iron knees being lower than they were, and canvas being lower, and I presume iron rigging will be lower by the time. I did not name the quality of the canvas, as I was fully aware you would send an article approved of, but not extra—thus, merchant's navy will do. As to the patent anchors: I thought they would be lighter to handle the patent ones, but was not aware that Lloyd's had equalized the weight, therefore I feel obliged to you for the information. You will please send the common ones. It will make a good saving and the weight according to Lloyd's for a 1600 ton ship. As to the charges for shipping the goods, or any other business we have to do, I wish it fully understood that I have every confidence that no charges will be made only what should be made. Your brothers and myself has arranged all, and I presume, according to your orders. I have agreed to give a mortgage on Queen square property, £2,000, and security on the ship for say £8,000, for I don't care what security I give you, as I well know that no advantage will be taken of me in any case, and I equally know that I will pay all

if spared, and I wish you to be fully covered, so as to have all done safely and with every confidence. As to the amount of advance to me, I thought when I first spoke to you £8,000 in money would answered, but we have been to much more expense than I expected, but the fifteen thousand named by Mr. H. Vaughan includes everything, outfits and fit for sea, and I believe little will be left of that sum; but one thing I do know, you cannot nor never could find a better ship nor a better model built in this Province. This is saying a good deal, but it is true. If I cannot build as good a ship as can be built in this country, I don't wish to build any. I am sorry to hear that you have been losing by any one, for I know what it is to lose money; this is the cause of me troubling my friends now. You have bought a cheap ship if good. I hope to get at least £2 per ton more for mine, and have faith to believe I will. I trust the iron knees will come, as we are now ready for them. It is reported that Mr. Bradshaw's ship is laid on: if so, you will have the outfits sent by her. The deck is corked to-morrow, and lower deck in and lower hold ceiled, and hooks and painters, kilsons, &c., and only four streaks to put in between decks, and the topsides is all on and turned the bilge with the bottom planking, poop planked outside and in, and beam kneed off, and forecastle also; thus we have little to do, but to caulk and join. The deck is or will be all caulked to-morrow night. Meantime I have £6,000 fire insurance on the ship. We have fine weather—no snow. You will be trying to sell the ship as soon as an opportunity will offer, as you will be posted up about those willing to purchase. You will be wearied in reading this lengthy document. Meantime I am yours truly,

JAMES SMITH.

[Marked C.N.S., Nov. 24, 1871, No. 10.]

No. 155.

St. John, N. B. Dec. 19th, 1864.

THOS. VAUGHAN, ESQ.:

Dear Sir—I wrote you on the 5th ult., and has none of your much esteemed favors to reply to. I then wrote you to ship the common anchors, which will be a good saving, and Leith common canvas, or common gourock, but I believe Leith is preferable. Your brother Henry tells me that Thos Wallace has a vessel on the berth for St. John, and you had shipped the iron knees and mast hoops and oakum. This will be ready for now. I purchased here what oakum caulked the decks and top sides and a few seams in the bottom. I will not do anything in the yard January and February, as days are short, and rough, cold weather, as we will have time to do all before middle of April, when we intend to launch, and whilst the knees is putting in and caulking, we will have ample time to do all. Lloyd's rules for anchors is 33½ cwt and 36½. Meantime I am yours truly,

JAMES SMITH.

[Marked C.N.S., November 24, 1871, No. 6.]

No. 157.

St. John, N. B., January 28th, 1865.

THOS. VAUGHAN, ESQ.:

Dear Sir—Your much esteemed favor of the 7th January is duly received, contents duly noted. I am pleased to see that Mr. Henry informs my conviction that I have a good ship. She is all planked and

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ceiled, decks in, part of bottom caulked. We are not doing much at the present time, only squaring up little matters, still we spend a good deal of money. You flatter me when you say she would be worth £2 per ton, or ought to be, more than a Quebec ship: this is rather more than I would expect, yet allowing them only worth £6 10s., I would like to come in for the other two pounds, and then would fall far short of what would pay me; but this is in the future. Something good I trust is in reserve for me, as I am thinking it is coming near to my return of prosperity; but I am in the hands of the over-ruler of all events, and I fully intend calmly to wait the end, and I trust all will be well. As to the size, some large hearted fellow is waiting her arrival that he may be able to open his bowels of compassion and give me a large price for what I know to be a faithful ship and will do her work well and quickly too. I observe your remark of size or weight of the anchors, It will be as well to send one wood and one iron stock; you may send one kedge if you please. I also see that you are mindful of the other outfits—that they are ready as soon as a ship is laid on. I know you will not allow any opportunity to pass unimproved when anything is required. Your people and myself has fixed up all as far as I know with harmony and satisfaction, and has no doubt will continue. The iron straps and hoops and oakum are here all right. We have the greater part of the knee moulds made, and eight of the lower hold knees all made. I hope to have them all in in four weeks from now, and this cold weather is a good time for caulking, as the dry cold shrinks the plank much better than even dry warm weather, as I hope to have her well caulked. Don't you sell her for more than ten guineas per ton. I wish you the compliments of the season. Meantime, I am yours truly with best wishes.

JAMES SMITH.

[Marked C.N.S., Nov. 24, 1871, No. 7.]

No. 158.

St. John, N. B., April 10th, 1865.

THOS. VAUGHAN, Esq.:

Dear Sir—In consulting with Mr. Henry Vaughan, we thought it best to write to you for marine insurance, although the ship will not be launched to the rigging arrives. I am nearly ready. I am putting bilge logs in—two tiers each side on top of the ceiling 121 feet long, right on the floor-head, and foothook heels, and let her pay me or not, I hope to have her a good ship for some person. True, it will cost a good deal for copper alone, but having undertaken it, I will do it well. The joiner work and paint is the only thing now, and the bilge logs. I think of launching on the 25th inst., but all will depend on the rigging arriving; but she will not sail before the first of June. This will be the time for low insurance. Please insure her for sixteen thousand pounds (£16,000) from launching to forty-eight hours in dock, or at least safely moored in dock in Liverpool. As you know the place where she is built, I will not describe it, but Robert has drawn a rough sketch, showing the place as it is, and also that there is less risk than any other in St. John. I never had any misfortune in launching, nor any way; by care I consider no risk; nor had I ever any leaky ship, new or old, nor any misfortune going home, only once, a mere trifle—leaving the matter in your hands entirely. She might not be launched before the 10th May in case the

rigging don't come, but cannot sail before the first of June. I might weary your patience with a long letter, but as you will be all posted up by Mr. H., I will come to a close. The invoice of the outfits is reasonable bill. Don't sell her at over £10 per ton. Ships look rather blue at present, but something good will or may come out of it yet. I hope your leg is got quite well. What have I done that you never write me; let me hear from you on receipt of this, and oblige yours truly with best wishes. 56s. 9d. offered to-day for deals to Liverpool; but I hope as the river is now open freights will improve. She is not measured yet, but will be as near 1600 tons as possible. You can describe her as that tonnage, 190 feet keel, nine feet rake, 41 feet 6 in. beam, 24 feet hold, full poop and forecastle, and house forward of the main hatch, scroll figure-head, intended to be named *Palm Tree*. Meantime I am yours truly.

JAMES SMITH.

[Loss, if any, payable to Messrs. D. & T. Vaughan, of St. John, N. B.]
[Marked C.N.S. Nov. 24, 1871, No. 13.]

No. 184. A power of attorney from James Smith to Albert Betts, dated 21st November, 1866, and marked C., C.N.S., put in evidence on August 17, 1871.

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